SPEECHES

ON THE

PASSAGE OF THE BILL

FOR THE

REMOVAL OF THE INDIANS,

DELIVERED IN THE

Congress of the United States,

APRIL AND MAY, 1830.

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INTRODUCTION.

From the first settlement of North America by Englishmen, it has been the practice to obtain Indian lands through the medium of treaties or voluntary purchases. In a few cases, lands were wrested from the original possessors in war; but the colonists never avowed the desire of conquest as a justifiable cause of war.

Though nearly all the parts of the United States, which are now inhabited by whites, were purchased from Indians, yet it does not follow that undue measures were not frequently resorted to, in order to induce a sale. Among these measures, unreasonable importunity deserves to be reckoned. New lands were obtained more rapidly than the necessities of the whites demanded; and the eagerness, with which acquisitions of territory were made from the Indians, naturally caused a good deal of apprehension in their minds.

As the British power on this continent increased, the claims and rights of the Indians were generally admitted. No pretensions were made to the right of taking their land from them without their consent. If they sold any part of their territory, they were required to sell it to the government, or the validity of the sale was not acknowledged by the British tribunals. This was the state of things at the commencement of the revolutionary war.

As soon as the Continental Congress began to act as the organ of the United States, (that is, as the organ of a nation which had just sprung into existence,) measures were taken to conciliate the favor of the Indians. They were addressed as independent sovereignties. They were entreated to remain neutral. Their territorial rights were guarantied to them; and they were dealt with, in all respects, as capable of making treaties, and of retaining forever their original rights of territory and government.

After the peace of 1783, the Confederated States entered into treaties with the large south-western tribes, the Cherokees, Creeks, Choctaws and Chickasaws. In this manner boundaries were fixed, and an implicit guaranty of territory was given. At the adoption of the Federal Constitution, all these treaties were confirmed and ratified not by the nation merely, as a whole, but by each State, as it performed the solemn act of coming into the Union.

President Washington, in the early part of his administration, applied directly to the Senate, and asked whether that body would advise and consent to give a solemn guaranty to the Creek and Cherokee nations of all their lands not ceded. To this question, proposed first in 1789, and again a year afterwards, the Senate gave, in each instance, an affirmative answer, without a dissenting voice. Treaties were made on this basis, first at New York with the Creeks, then at Holston with the Cherokees, in both of which the guaranty was solemnly given, and afterwards solemnly ratified by the Senate.

Treaties were made by the United States with Indian nations, as occasion required; the number of such treaties amounting to more than three in a year, on an average. Several of these treaties were negotiated with the tribes, whose residence was within the chartered limits of Georgia. In 1802, a compact was made between the United States and Georgia, by which a long controversy was settled, and the United States bound themselves to extinguish the Indian title to lands within the chartered limits of that State. The obligation was conditional, however; and there was nothing in the compact, which implied that the United States did not acknowledge the perfect right of the Indians to the peaceable and exclusive occupancy of their country forever.

Since 1802, numerous treaties have been made with the Indians, in most of which, portions of their territory were ceded to the United States. In this manner, Georgia has received about 20,000,000 of acres under the compact; and about 5,000,000 of acres now remain in the occupancy of the Cherokees, within the chartered limits of that State. Since the year 1819, the Cherokees have peremptorily and constantly refused to sell another foot of land. In the mean time, Georgia was constantly importuning the general government to extinguish the Cherokee title by treaty; always admitting, that this was the only way, in which the Indian title could be extinguished.

But suddenly, in December 1827, the legislature and executive of Georgia assumed an attitude entirely new, and totally unlike any position which had ever before been assumed by any State in the Union, or by the United States. The new attitude was produced by the annunciation of the following doctrines, and others of a similar character; viz. that Georgia has a perfect title, by the right of discovery, to all the land within her chartered limits; that the Indians have no title, but a mere occupancy, determinable at the pleasure of Georgia; that she may take possession of their lands by force; that the United States are bound to extinguish the Indian title, either by negotiation or force; and that, as the United States have failed in their engagements, Georgia has a right to take the matter into her own hands.

As a consequence of these doctrines, Georgia declares, that, if other

means fail, she will resort to violence in support of her claims; and that, as she wants the Cherokee lands, *she will have them.*

Following up these principles, in 1828 and 1829, Georgia extends her laws over the Cherokees, and enacts several provisions of a most oppressive and tyrannical character. The Cherokees immediately resort to the guaranty of the United States, and ask protection against these laws. The President of the United States informs them, that he has no constitutional power to protect them. They next petition Congress; and, while their petition is pending and unanswered, a bill is introduced for the purpose of enabling them to remove. They say, that they do not wish to remove, but to remain on the land of their fathers.

In this state of things, the bill, in opposition to which the following speeches were delivered, became the topic of debate. It has been suggested, that the heads of arguments in favor of the bill should here be given; and, after some hesitation, the editor has concluded to give a brief abstract of them. The hesitation arose from the nature and character of these arguments. They are almost universally founded on false assumptions. But many readers would have no conception how utterly groundless the assumptions are; and to send them forth to the public unexplained, seems to give them a standing to which they are by no means entitled. How many readers are there, in every community, who look at an introduction of a book, with a few indiscriminate passages here and there, and read no more! If a plausible case is made out at the beginning, they take it for granted, that the facts, at least, are correctly stated. But nothing could be more fallacious in reference to the case before us. It was stated, by the advocates of the bill, that the United States had bound themselves, by the compact of 1802, to extinguish the Indian title to lands within the limits of Georgia; and many elaborate arguments rested on this assumption. But the fact, that the engagement was *conditional*, was omitted. The advocates of the bill asserted, also, that other States had legislated over the Indians in the same manner, and to the same extent, as Georgia has recently done. For this assertion there is no support whatever. Let these two instances stand as specimens.

In the following statement of topics, the positions, if not the words, are taken from printed speeches of advocates of the bill, and from the reports of the committees on Indian affairs.

On the question, whether the Indians had any right to their country or not, it was alleged, by the advocates of the bill,

That the king of England claimed the right of disposing of territory, on this continent, without any regard to the possession of the Indians; that they were considered merely as an incumbrance; and that the proclamation of 1763 assumed the sovereignty of Great Britain over the Indians:

That, on the declaration of independence, the States, respectively, succeeded to the sovereignty of the mother country:

That, from the first settlement of North America, the natives were subjected to the arts and the arms of Europeans; that civilization and force prevailed; and that, although the course of measures with the Indians cannot be justified, it will always be imitated:

That the Cherokees are a conquered people, having been the allies of Great Britain in the revolutionary war: and

That, being a conquered people, they have no claim to territory or self-government.

It is not unjust, or oppressive, therefore, in Georgia to assert her claims to the land of the Cherokees.

In answer to the plea for protection, which the Cherokees offer, it was urged,

That, although many compacts had been made between the United States and Indians, which had been called treaties, and which had been sent to the Senate and ratified as treaties, yet, when made with tribes residing in any State, they were not in fact treaties, within the meaning of the Constitution:

That these compacts, which are called treaties, were submitted to by the several States, because the States acquired lands in this manner; but when the States were limited in their jurisdiction, and restrained in their rights, by these compacts, it could not be expected that they would submit any longer:

That compacts with Indians not within the limits of States are treaties, according to the Constitution; because, in these cases, the national government alone can treat with them:

That the guaranty given in the treaty of Holston was intended more for the intimidation of the whites, than as a serious protection of the Indians:

That, when the guaranty was repeated, seven years afterwards, there was no necessity of repeating it: and

That it is very absurd to suppose, that independent States will suffer their limits to be curtailed by tribes of savages.

On the subject of the rights of Georgia, as an independent State, it was urged,

That she would assert her right to a jurisdiction over all the territory within her own limits:

That, although she has *a very inconsiderable interest* in the question now before Congress, she is determined to assert and maintain the rights of sovereign and independent States:

That neither the United States, nor any separate State, has a right to demand of Georgia the reasons of her conduct in regard to her own population, or any class of persons residing within her limits: and

That nothing will prevent her executing her purposes in this matter.

It was urged, also, that Georgia had been greatly vilified in this controversy; that she is "the evening chant and the matin song of all the calumniators in the Union, who have taken the Cherokees in to their holy keeping;" and that "no epithet is too strong, no reproach too foul, to cast upon her, for having followed the example of ten States, in the exercise of jurisdiction over the Indians within their territory."

Other States were said to have enacted much severer laws, in regard to the Indians, than the present laws of Georgia, which are so much complained of; and yet no sympathy has been called forth in behalf of any Indian tribe but the Cherokees.

As to the conflicting claims of Georgia and the Cherokees, while some advocates of the bill considered all existing treaties with Indians as mere nullities, others held, that the treaties would be binding on the United States, were it not for pre-existing obligations, incompatible with these treaties. They admitted, that general Washington and his cabinet, and the Senate of the First Congress, and all the national authorities from 1789 till quite recently, supposed that we were bound; that the people of the United States had all along supposed themselves to be bound; and that the Indians had always supposed the United States to be bound by these treaties. It was not denied, that the stipulations are all plain; that they were honestly intended, and allow but of one interpretation, which is in favor of the Indians. But it was argued, that the United States had guaranteed the integrity of all the separate States, and therefore could not guaranty the possession of the Indians residing upon any part of the chartered territory of States. The general government must therefore do the best it can. When it cannot fulfil an obligation, it must indemnify for the failure to fulfil.

As to the expediency of the removal of the Indians, it was urged, That the acquisition of the lands, which the south-western tribes occupy, would open a large tract for sale and settlement; that the convenience of the Southern States would be much promoted; and that the proceeds of the sales of those lands would more than reimburse all the expenses attending the contemplated removal.

It was stated, also, that the removal of the Indians would be greatly to their advantage, and, on this account, should receive the support of all their real friends.

The country to which they were invited to remove, was represented as very fertile, and abundantly large for a residence of all the tribes. The title to it may be permanently guarantied; and the emigrating Indians will live under the sole protection of the United States. Here they will not be troubled by the conflicting claims of States exercising jurisdiction over them. They will feel themselves free from this constant apprehension. They can proceed, therefore, in their plans of civilization without interruption. The strong

arm of the general government will protect them from intruders. They will be out of the reach of the whites, and beyond the pressure of population. The benevolence of the government and of individuals can here display itself in the best plans for the melioration of the Indian character.

In carrying on the business of removal, all the advocates of the bill disclaimed a resort to force. The subject is to be fairly proposed to the Indians; and, if they are willing to remove, the government will kindly aid them in doing so. If they prefer to stay, they must come under State laws, and, of course, be subject to all the laws which the States shall see fit to enact hereafter. From the operation of these laws the United States cannot protect them.

The present condition of the Indians was represented as being exceedingly wretched. They were said to be, generally, in a more hopeless state than at any previous period of their history. The chiefs were charged with ruling the common people with severity. It was said, that the chiefs appropriate all the annuities to their own benefit.

The sympathy professed, in different parts of the United States, for the Cherokees, was described as the work of fanatics, and pretended philanthropists, who had their own purposes to answer, and who were well paid for their services from the Cherokee treasury. This allegation is so gross a slander, that it would be wrong to repeat it without saying, that it is totally destitute of foundation; and that there is not, and never was, a particle of evidence in support of it.

The foregoing summary embraces, it is believed, all the arguments in favor of the bill. Some of its advocates expressed a strong belief that the removal of the Indians would be for their benefit; but others boldly declared, that this was not *their* object, and that the Indians would not be improved in their condition, whether they should remove or remain.

The opposition to the bill was made with great earnestness, and with every mark of entire sincerity. There was no indication, that the concern expressed for the national honor, and the dread of seeing a foul and indelible stain fixed upon the character of the country, were affected, or overstated. A deep solemnity pervaded the efforts of the honorable men, who exerted themselves to defeat a measure, which they declared to be, in their apprehension, inconceivably disastrous.

On the other hand, the advocates of the bill most evidently placed no reliance upon argument. They never met the statements and reasonings of their opponents; but showed very clearly, that they trusted only to the power of self interest and party discipline.

SPEECH

OF THE

HON. THEODORE FRELINGHUYSEN,

SENATOR FROM NEW JERSEY,

DELIVERED IN THE SENATE OF THE UNITED STATES,
APRIL 7, 1830.*

THE Bill to provide for an exchange of Lands with the Indians residing in any of the States or Territories, and for their removal West of the river Mississippi, being under consideration, MR. FRELINGHUYSEN spoke as follows:—

MR. PRESIDENT: I propose an amendment to this bill, by the addition of two sections, in the form of provisos:—the first of which brings up to our consideration the nature of our public duties, in relation to the Indian Nations, and the second provides for the continuance of our future negotiations, by the mode of treaties, as in our past intercourse with them. The following is the amendment:

"*Provided always*, That, until the said tribes or nations shall choose to remove, as by this act is contemplated, they shall be protected in their present possessions, and in the enjoyment of all their rights of territory and government, as heretofore exercised and enjoyed, from all interruptions and encroachments.

"*And provided also*, That, before any removal shall take place of any of the said tribes or nations, and before any exchange or exchanges of land be made as aforesaid, the rights of any such tribes or nations in the premises shall be stipulated for, secured, and guarantied, by treaty or treaties, as heretofore made."

The first of these sections discloses the real object sought by this bill, seemingly composed of harmless clauses. It supposes that the design of the system of which the present bill forms but a part, is really to remove all the Indian tribes beyond the Mississippi, or, in case of their refusal, to subject them to state sovereignty and legislation. The Hon. Senator, (Mr. White,) who yesterday addressed the Senate, found it necessary so to consider it; and to anticipate and endeavor to meet all such objections to this course of policy, as he deemed worthy of a refutation.

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* This speech was commenced on the 7th, and concluded on the 9th, a part of each day's session being consumed by the ordinary routine of business. The whole speech occupied the attention of the Senate about six hours. It is here much compressed.

Sir, I prefer that this latent object should be put fully before us, that we and the nation may look at it, and freely scrutinize it. At an early stage of the present administration, its views and opinions on the interesting subject of our Indian relations, were developed in language not to be mistaken. It is greatly to be regretted, Sir, that our present chief magistrate did not pursue the wise and prudent policy of his exalted predecessor, President Washington, who, at a time of collision and difficulty with these tribes, came before the Senate, and laid open to them, in propositions for their approbation, the various important subjects involved in our relations. The annexed extract from the Journals of the Senate illustrates the principles of Washington's administration. It follows:

"*Saturday, August* 22, 1789.

"The President of the United States came into the Senate, attended by general Knox, and laid before the Senate the following state of facts, with the questions thereto annexed, *for their advice and consent*"

This was a most important document. It developed all the collisions that existed between the Indian tribes and the States; and referred to the consideration of the Senate certain leading principles of policy, which he thought it was wise to pursue.

These principles are imbodied in seven distinct interrogatories; the fourth of which submits to the Senate "whether the United States shall solemnly guaranty to the Creeks their remaining territory, and maintain the same, if necessary, *by a line of military posts?*" This question "was wholly answered in the affirmative" by that body, and the blank (for an appropriation of necessary funds) was ordered to be filled at the discretion of the President of the United States. Again, on the 11th of August, 1790, President Washington sent a special message to the Senate by his Secretary, the subject matter of which he introduces by the following suggestion:

"*Gentlemen of the Senate:*

"Although the treaty with the Creeks may be regarded as the main foundation of the future peace and prosperity of the Southwestern frontier of the United States, yet, in order fully to effect so desirable an object, the treaties which have been entered into with the other tribes in that quarter, must be *faithfully performed* on our part."

He then proceeds to remind the Senate, that, by the treaty with the Cherokees, in November, 1785, (the treaty of Hopewell,) 'the said Cherokees placed themselves under the protection of the United States, and had a boundary assigned them;' that the white people settled on the frontiers had openly violated the said boundary by intruding on the Indian lands; that the United States in Congress assembled, on the first day of September, 1788, had, by their proclamation, forbidden all such unwarrantable intrusions, and enjoined the intruders to depart without loss of time; but that there were still some refractory intruders remaining. The President then distinctly announces his determination to exert the powers intrusted to him by the

constitution, in order to carry into faithful execution the treaty of Hopewell, unless a new boundary should be arranged with the Cherokees, embracing the intrusive settlement, and compensating the Cherokees for the cessions they shall make on the occasion. And, in view of the whole case, he requests the advice of the Senate, whether overtures shall be made to the Cherokees to arrange such new boundary, and concludes his communication with the following emphatical question: "3d. Shall the United States stipulate solemnly to guaranty the new boundary which may be arranged?"

It produced as pointed a response—for the Senate

"*Resolved*, In case a new or other boundary than that stipulated by the treaty of Hopewell, shall be concluded with the Cherokee Indians, that the Senate do advise and consent solemnly to guaranty the same."

A new boundary was arranged by a second treaty; the solemn guarantee was given to the Cherokees; and cogent, indeed, should be the causes that now lead us to think lightly of such sacred obligations.

I lament, Sir, that so bright and illustrious a precedent was not regarded, and that the President had not yielded to the safe guidance of such high example; and I deplore it the more, because it was concerning these very tribes, in the State of Georgia, that general Washington chose to confer with his constitutional advisers.

Instead of this just proceeding, the present administration has thought proper, without the slightest consultation with either House of Congress—without any opportunity for counsel or concert, discussion or deliberation, on the part of these co-ordinate branches of the government, to despatch the whole subject in a tone and style of decisive construction of our obligations, and of Indian rights. It would really seem, Sir, as if opinion was to be forestalled, and the door of inquiry shut forever upon these grave questions, so deeply implicating our national faith and honor.

We must firmly protest against this executive disposition of these high interests. The government cannot rescind, modify or explain away our public treaties. They are the supreme law of the land, so declared to be by the constitution. They bind the President and all other departments, rulers and people. And when their provisions shall be controverted—when their breach or fulfilment become subjects of investigation—here, Sir, and in the other hall of our legislation, are such momentous concerns to be debated and considered. That we may freely exercise these essential powers, and review the proclaimed opinions of the executive, I have submitted the first branch of the amendment. We possess the constitutional right to inquire wherefore it was, that, when some of these tribes appealed to the executive for protection, according to the terms of our treaties with them, they received the answer that the government of the United States could not interpose to arrest or prevent the legislation of the States over them. Sir, this was a harsh

measure, indeed, to faithful allies, that had so long reposed in confidence on a nation's faith. They had, in the darkest hour of trial, turned to the ægis which the most solemn pledges had provided for them, and were comforted by the conviction that it would continue to shed upon them a pure and untarnished beam of light and hope. Deep, indeed, must have been their despondency, when their political father assured them that their confidence would be presumptuous, and dissuaded them from all expectation of relief.

Mr. President: The instructions that have proceeded from the war department to the agents of Indian affairs have excited just and strong jealousies of the measures that are now recommended. They have prompted this amendment, in the hope that, by some public and decided expression of our disapprobation, the course of political management with these tribes may be changed, and our country saved from the dishonor of buying over the consent of corrupted chiefs to a traitorous surrender of their country.

I will read a part of these instructions. They are from the war department to generals Carroll and Coffee, of the date of 30th May, 1829:

"The past (remarks the Secretary, in respect to *Indian councils*) has demonstrated their utter aversion to this mode, whilst it has been made equally clear, that another mode promises greater success. In regard to the first, (that by councils,) the Indians have seen in the past, that it has been by the result of councils that the extent of their country has been from time to time diminished. They all comprehend this. Hence it is that those, who are interested in keeping them where they are, alarm their fears, and, by previous cautioning, induce them to reject all offers looking to this object. There is no doubt, however, but the mass of the people would be glad to emigrate; and there is as little doubt that they are kept from this exercise of their choice by their chiefs and other interested and influential men," &c. Again: "Nothing is more certain than that, if the chiefs and influential men could be brought into the measure, the rest would implicitly follow. It becomes, therefore, a matter of necessity, if the general government would benefit these people, *that it move upon them in the line of their own prejudices*, and, by the adoption of any proper means, break the power that is warring with their best interests. The question is, How can this be best done? Not, it is believed, for the reasons suggested, by means of a general council. There, they would be awakened to all the intimations which those who are opposed to their exchange of country might throw out; and the consequence would be—what it has been—a firm refusal to acquiesce. The best resort is believed to be that which is embraced in an appeal to the chiefs and influential men, *not together*, but apart, at their own houses, and, by a proper exposition of their real condition, rouse them to think of that; whilst offers to them, of extensive reservations in fee simple, *and other rewards*, would, it is hoped, result in obtaining their acquiescence."

Let us analyze this singular state paper. It does not relish the congregation of Indian councils. In these assemblies, they deliberate and weigh the policy of measures—they calculate the results of proposed improvements. These councils imbody the

collected wisdom of the tribes. Their influence is of the authority of law. The people look to them for protection. They know that in the multitude of counsellors there is *safety*. Hence nations, far in advance of the Indians, always meet in council, when their great interests are to be promoted or defended. But these special agents are discouraged from hoping that the object can be obtained in this good old-fashioned way. The Indians are too *wise* to be caught when the net is spread so fully in sight. They are directed to avoid all *associations*; and, with the public purse in hand, to take the chiefs *alone*—to approach them individually, and at *home*—"*to meet them in the way of their prejudices.*" I admire the ingenious clothing of a most odious proposal.

A strong hint is suggested to try the effect of terror, and, by a proper exposition of their real condition, rouse them to think upon that, and to follow this up with "large offers to them of extensive reservations in fee simple, and other rewards." The report made by one of these agents to the war department, dated September 2d, 1829, still further discloses the nature of the exigencies to which the Indians are to be subjected, to constrain their removal. The agent observes,

"The truth is, they (the Cherokees) rely with great confidence on a favorable report on the petition they have before Congress. *If that is rejec'ed, and the laws of the States are enforced,* you will have no difficulty in obtaining an exchange of lands with them."

It may be true, that, if we withdraw our protection, give them over to the high-handed, heart-breaking legislation of the States, and drive them to despair, when mercenary inducements fail to win them, force and terror may compel them. We shall have no difficulty, the agent assures the war department. Sir, there will be one difficulty, that should be deemed insurmountable. Such a process will disgrace us in the estimation of the whole civilized world. It will degrade us in our own eyes, and blot the page of our history with indelible dishonor.

Now, Sir, I have brought this measure before the Senate, and wait with intense anxiety to see the final disposition of it. Where is the man who can, in view of such policy, open the door, or afford the slightest facility, to the operation of influences, that we should blush with honest shame to have employed with our equals in the scale of civilization? It is not intended, Sir, to ascribe this policy exclusively to the present administration. Far from it. The truth is, we have long been gradually, and almost unconsciously, declining into these devious ways, and we shall inflict lasting injury upon our good name, unless we speedily abandon them.

I now proceed to the discussion of those principles which, in my humble judgment, fully and clearly sustain the claims of the Indians to all their political and civil rights, as by them asserted.

And here, Mr. President, I insist that, by immemorial possession, as the original tenants of the soil, they hold a title beyond and superior to that of the British crown and her colonies, and

to all adverse pretensions of our Confederation and subsequent Union. God, in his providence, planted these tribes on this western continent, for aught that we know, before Great Britain herself had a political existence. I believe, Sir, it is not now seriously denied that the Indians are men, endowed with kindred faculties and powers with ourselves; that they have a place in human sympathy, and are justly entitled to a share in the common bounties of a benignant Providence. And, with this conceded, I ask in what code of the law of nations, or by what process of abstract deduction, their rights have been extinguished.

Where is the decree or ordinance, that has stripped of their rights these early and first lords of the soil? Sir, no record of any such decree can be found. And I might triumphantly rest the hopes of these feeble fragments of once great nations upon this impregnable foundation. However mere human policy, or the law of power, or the tyrant's plea of expediency, may have found it convenient at any time to transgress the unchangeable principles of eternal justice, no argument can shake the political maxim—that where the Indian always *has been*, he enjoys an absolute right still *to be*, in the free exercise of his own modes of thought, government and conduct.

Mr. President: In the light of natural law, can a reason for a distinction exist from the mode of enjoying that which is my own? If I use land for hunting, may another take it because he needs it for agriculture? I am aware that some writers have, by a system of artificial reasoning, endeavored to justify, or rather excuse, the encroachments made upon Indian territory; and they denominate these abstractions the law of nations, and, in this ready way, the question is despatched. Sir, as we trace the sources of this law, we find its authority to depend either upon the conventions or common consent of nations. And when, permit me to inquire, were the Indian tribes ever consulted on the establishment of such a law? Whoever represented them or their interests in any congress of nations, to confer upon the public rules of intercourse, and the proper foundations of dominion and property? The plain matter of fact is, that all these partial doctrines have resulted from the selfish plans and pursuits of more enlightened nations; and it is not matter for any great wonder, that they should so largely partake of a mercenary and encroaching spirit in regard to the claims of the Indians.

It is however admitted, Sir, that when the increase of population and the wants of mankind, demand the cultivation of the earth, a duty rests upon the proprietors of large and uncultivated regions, to apply them to these useful purposes. But such appropriations are to be obtained by fair contract, and for reasonable compensation. It is, in such a case, the duty of the proprietor to sell—we may properly address his reason to induce him; but we cannot rightfully compel the cession of his lands, or take them by violence, if his consent be withheld.

It is with great satisfaction, that I am enabled, upon the best authority, to affirm, that this duty has been largely and generously met and fulfilled on the part of the aboriginal proprietors of this continent. Several years ago, official reports to Congress stated the amount of Indian grants to the United States to exceed 214 millions of acres. Yes, Sir, we have acquired, and now own, more land, as the fruits of their bounty, than we shall dispose of, at the present rate, to actual settlers in two hundred years. For, very recently, it has been ascertained on this floor, that our public sales average not more than about one million of acres annually. It greatly aggravates the wrong that is now meditated against these tribes, if we merely look at the rich and ample districts of their territories that either force or persuasion has incorporated into our public domains. As the tide of our population has rolled on, we have added purchase to purchase. The confiding Indian listened to our professions of friendship. We called him brother, and he believed us. Millions after millions he has yielded to our importunity, until we have acquired more than can be cultivated in centuries—and yet we crave more. We have crowded the tribes upon a few miserable acres on our southern frontier—it is all that is left to them of their once boundless forests—and still, like the horseleech, our insatiate cupidity cries, *Give, Give.*

Before I proceed to deduce collateral confirmations of this original title, from all our political intercourse and conventions with the Indian tribes, I beg leave to pause a moment, and view the case, as it lies beyond the treaties made with them; and aside also from all conflicting claims between the confederation and the colonies, and the Congress of the States.

Our ancestors found these people, far removed from the commotions of Europe, exercising all the rights, and enjoying the privileges, of free and independent sovereigns of this new world. They were not a wild and lawless horde of banditti; but lived under the restraints of government, patriarchal in its character, and energetic in its influence. They had chiefs, head men, and councils. The white men approached them as friends. They extended the olive branch, and, being then a feeble colony, and at the mercy of the native tenants of the soil, by presents and professions, propitiated their good will. The Indian yielded a slow, but substantial confidence; granted to the colonies an abiding place; and suffered them to grow up to man's estate beside him. He never raised the claim of elder title. As the white man's wants increased, he opened the hand of his bounty wider and wider. By and by, conditions are changed. His people melt away; his lands are constantly coveted; millions after millions are ceded. The Indian bears it all meekly; he complains, indeed, as well he may; but suffers on; and now he finds that this neighbor, whom his kindness had nourished, has spread an adverse title over the *last remains* of his patrimony, barely adequate to his wants, and turns upon him, and says: "Away! we cannot endure you so near us. These forests and rivers, these groves of your fathers, these firesides and

hunting grounds, are ours by the right of power, and the force of numbers."

Sir, let every treaty be blotted from our records, and in the judgment of natural and unchangeable truth and justice, I ask, Who is the injured, and who is the aggressor? Let conscience answer, and I fear not the result. Let those who please, denounce the public feeling on this subject, as the morbid excitement of a false humanity; but I return with the inquiry, whether I have not presented the case truly, with no feature of it overcharged or distorted. And, in view of it, who can help feeling? Do the obligations of justice change with the color of the skin? Is it one of the prerogatives of the white man, that he may disregard the dictates of moral principle, when an Indian shall be concerned? No, Mr. President. In that severe and impartial scrutiny, which futurity will cast over this subject, the righteous award will be, that those very causes which are now pleaded for the relaxation of the rules of equity, urged upon us not only a rigid execution of the highest justice, to the very letter, but claimed at our hands a generous and magnanimous policy.

Standing here then, on this unshaken basis, how is it possible that even a shadow of claim to soil or jurisdiction can be derived, by forming a collateral issue between the State of Georgia and the general government? Her complaint is made against the United States, for encroachments on her sovereignty. Sir, the Cherokees are no parties to this issue; they have no concern in this controversy. They hold by better title than either Georgia or the Union. They have nothing to do with State sovereignty, or United States sovereignty. They are above and beyond both. True, Sir, they have made treaties with both, but not to *acquire* title or jurisdiction; *these* they had *before* —ages before the evil hour, when their white brothers fled to them for an asylum. They treated to secure protection and guaranty for subsisting powers and privileges; and so far as those conventions raise obligations, they are willing to meet, and always have met, and faithfully performed them; and now expect from a great people the like fidelity to plighted covenants.

I have thus endeavored to bring this question up to the control of first principles. I forget all that we have promised, and all that Georgia has repeatedly conceded, and by her conduct confirmed. Sir, in this abstract presentation of the case, stripped of all collateral circumstances, (and these only the more firmly establish the Indian claims;)—if the contending parties were to exchange positions; place the white man where the Indian stands; load *him* with all these wrongs,—and what path would his outraged feelings strike out for his career? Twenty shillings tax, I think it was, imposed upon the immortal Hampden, roused into activity the slumbering fires of liberty in the old world. Thence she dates a glorious epoch, whose healthful influence still cherishes the spirit of freedom. A few pence of duty on tea, that invaded no fireside, excited no personal fears, disturbed no immediate interest whatever, awakened in the

American colonies a spirit of firm resistance; and how was the tea tax met, Sir? Just as it should be. There was lurking, beneath this trifling imposition of duty, a covert assumption of authority, that led directly to oppressive exactions. "No taxation without representation," became our motto. We would neither pay the tax, nor drink the tea. Our fathers buckled on their armor, and, from the water's edge, repelled the encroachments of a misguided cabinet. We successfully and triumphantly contended for the very rights and privileges, that our Indian neighbors now implore us to protect and preserve to them. Sir, this thought invests the subject under debate with most singular and momentous interest. *We*, whom God has exalted to the very summit of prosperity—whose brief career forms the brightest page in history; the wonder and praise of the world; Freedom's hope, and her consolation:—*We* about to turn traitors to our principles and our fame—about to become the oppressors of the feeble, and to cast away our birth-right! Mr. President, I hope for better things.

It is a subject full of grateful satisfaction, that, in our public intercourse with the Indians, ever since the first colonies of white men found an abode on these western shores, we have distinctly recognised their title; treated with them as the owners; and, in all our acquisitions of territory, applied ourselves to these ancient proprietors, by purchase and cession alone, to obtain the right of soil. Sir, I challenge the record of any other or different pretension. When or where did the assembly or convention meet, which proclaimed, or even suggested to these tribes, that the right of discovery contained a superior efficacy to all prior titles?

And our recognition was not confined to the soil merely. We regarded them *as nations*—far behind us, indeed, in civilization; but still we respected their forms of government—we conformed our conduct to their notions of civil polity. We were aware of the potency of any edict that sprang from the deliberations of the council fire; and when we desired lands, or peace, or alliances, to this source of power and energy, to this great lever of Indian government, we addressed our proposals. To this alone did we look, and from this alone did we expect aid or relief.

I now proceed, very briefly, to trace our public history in these important relations. As early as 1763, a proclamation was issued by the king of Great Britain to his American colonies and dependencies, which, in clear and decided terms, and with an honorable regard for Indian privileges, declared the opinions of the crown and the duties of its subjects. The preamble to that part of this document which concerns Indian affairs, is couched in terms that cannot be misunderstood. I give a literal extract:

"And whereas it is just and reasonable, and essential to our interest and the security of our colonies, that the *several nations* or tribes of Indians *with whom we are connected, and who live under*

our protection, should not be molested or disturbed in the possession of such parts of our dominions and territories, as, *not having been ceded to or purchased by us*, are reserved to them, or any of them, as their hunting grounds."——

Therefore the governors of colonies are prohibited, upon any pretence whatever, from granting any warrants of survey, or passing any patents for lands, "upon any lands whatever, which, not having been ceded or purchased, were reserved to the said Indians;" and, by another injunction in the same proclamation, "all persons whatever, who have either willfully or inadvertently seated themselves upon any lands, which, not having been ceded to or purchased by the crown, were reserved to the Indians as aforesaid, are strictly enjoined and required to remove themselves from such settlements."

This royal ordinance is an unqualified admission of every principle that is now urged in favor of the liberties and rights of these tribes. It refers to them as nations, that had put themselves under the protection of the crown; and, adverting to the fact that their lands had not *been ceded or purchased*, it freely and justly runs out the inevitable conclusion, that they are reserved to these nations as their property; and forbids all surveys and patents, and warns off all intruders and trespassers. Sir, this contains the epitome of Indian history and title. No king, colony, state or territory, ever made, or attempted to make, a grant or title *to* the Indians, but universally and perpetually derived their titles *from* them. This one fact, that stands forth broadly on the page of Indian history—which neither kings nor colonies—neither lords proprietors, nor diplomatic agents, have, on any single occasion, disputed—is alone sufficient to demolish the whole system of political pretensions, conjured up in modern times, to drive the poor Indian from the last refuge of his hopes.

The next important era, in the order of time, relates to the dispute of the colonies with Great Britain. The attention of the Congress, on the eve of that conflict, was called to the situation of these tribes, and their dispositions on that interesting subject. Then, Sir, we approached them as independent nations, with the acknowledged power to form alliances with or against us. For, in June, 1775, our Congress resolved, "That the Committee for Indian Affairs do prepare proper talks to the several tribes of Indians, for engaging the *continuance of their friendship to us, and neutrality* in our present unhappy dispute with Great Britain." Again, on the 12th July, 1775, a report of the Committee was agreed to, with the following clause at its head: "That the securing and preserving *the friendship of the Indian nations*, appears to be a subject of the utmost moment to these colonies." And, Sir, the journals of that eventful period of our history are full of resolutions, all of which indicate the same opinions of those illustrious statesmen, respecting the unquestioned sovereignty of the Indians. I forbear further details. After the revolution, and in the

eighth year of our Independence, in the month of September, A. D. 1783, the Congress again took up the subject of Indian affairs, and resolved to hold a convention with the Indians residing in the middle and northern States, who had taken up arms against us, for the purposes of "receiving them into the favor and protection of the United States, *and of establishing boundary lines of property*, for separating and dividing the settlements *of the citizens from the Indian* villages and hunting grounds, and thereby extinguishing, as far as possible, all occasion for future animosities, disquiet and contention."

If, at any point of our existence as a people, a disposition to encroach upon the Indians, and to break down their separate and sovereign character, could have been looked for, or at all excused, this was the time; when we had just come out of a long, severe and bloody conflict, often prosecuted by our foes with unnatural barbarity, and to aggravate which, these very tribes had employed their savage and ferocious customs. And yet, Sir, what do we find? Instead of the claims of conquest, the rights of war, now so convenient to set up, the American Congress, greatly just, accord to these very Indians the character of foreign nations, and invite them to take shelter under our favor and protection; not only this, but adopt measures 'to ascertain and establish *boundary lines of property between our citizens and their* villages and hunting grounds.'

Under the confederation of the old thirteen States, and shortly before the adoption of the Constitution, on the 28th of November, 1785, a treaty was made with the Cherokee nation at Hopewell. This treaty, according to its title, was concluded between "*Commissioners Plenipotentiary* of the United States of America, of the one part, and the Headmen and Warriors of all the Cherokees, of the other." It gives "peace to all the Cherokees," and receives them into the favor and protection of the United States. And, by the first article, the Cherokees "agree to restore all the prisoners, *citizens of the United States*, or subjects of their allies, to their entire liberty." Here, again, we discover the same magnanimous policy of renouncing any pretended rights of a conqueror in our negotiations with the allies of our enemy. We invite them to peace; we engage to become their protectors; and, in the stipulation for the liberation of prisoners, we trace again the broad line of distinction between *citizens* of the United States and the Cherokee people.

Who, after this, Sir, can retain a single doubt as to the unquestioned political sovereignty of these tribes. It is very true, that they were not absolutely independent. As they had become comparatively feeble, and as they were, in the mass, an uncivilized race, they chose to depend upon us for protection; but this did not destroy or affect their sovereignty. The rule of public law is clearly stated by Vattel:—"One community may be bound to another by a very unequal alliance, and still be a sovereign State. Though a weak State, in order to provide for its safety, should place itself under the protection of a more powerful one, yet, if it reserves to itself *the right of govern-*

ing its own body, it ought to be considered as an independent State." If the right of self-government is retained, the State preserves its political existence; and, permit me to ask, when did the southern Indians relinquish this right? Sir, they have always exercised it; and were never disturbed in the enjoyment of it, until the late legislation of Georgia and the States of Alabama and Mississippi.

The treaty next proceeds to establish territorial domains, and to forbid all intrusions upon the Cherokee country, by any of our citizens, on the pains of outlawry. It provides, that if any citizen of the United States shall remain on the lands of the Indians for six months "after the ratification of the treaty, such person shall forfeit the protection of the United States, and the Indians *may punish him or not, as they please.*" What stronger attribute of sovereignty could have been conceded to this tribe, than to have accorded to them the power of punishing our citizens according to their own laws and modes? and, Sir, what more satisfactory proof can be furnished to the Senate, of the sincere and inflexible purpose of our government to maintain the rights of the Indian nations, than the annexation of such sanctions as the forfeiture of national protection, and the infliction upon intruders of any punishment within the range of savage discretion. It is to be recollected, that this treaty was made at a time when all admit the Cherokees to have been, with very rare exceptions, in the rudest state of pagan darkness.

Mr. President, it is really a subject of wonder, that, after these repeated and solemn recognitions of right of soil, territory and jurisdiction, in these aboriginal nations, it should be gravely asserted, that they are mere occupants at our will; and, what is absolutely marvellous, that they are a part *of the Georgia population*—a district of her territory, and amenable to her laws, whenever she chooses to extend them!

After the treaty of Hopewell was made and ratified, and in the year 1787, the States of North Carolina and Georgia transmitted their protests to Congress, in which they complained of the course of transactions adopted with respect to the Indians, and asserted a right in the States to treat with these tribes, and to obtain grants of their lands. The Congress referred the whole matter to a committee of five, who made an elaborate report, that disclosed the principles upon which the intercourse of the confederacy with these people was founded. It is material to a correct understanding of this branch of the subject, that we should advert to a limitation, subsisting at that time, upon the powers of the old Congress. The limitation is contained in the following clause of the articles of confederation: —"Congress shall have the sole and exclusive right and power of regulating the trade and managing all affairs with the Indians, not members of any of the States; provided that the legislative right of any State, within its own limits, be not infringed or violated."

Upon this clause and its proviso, the committee proceed to report: "In framing this clause, the parties to the federal compact must have had some definite objects in view. The objects that come into view principally in forming treaties, or managing affairs with the Indians, *had been long understood*, and pretty well ascertained, in this country. The committee conceive that it has been long the opinion of the country, *supported by justice and humanity*, that the Indians have *just claims to all lands* occupied by, and *not fairly purchased* from, them." "The laws of the State can have no effect upon a tribe of Indians, or their lands within a State, so long as that tribe is independent, and not a member of the State. It cannot be supposed that the State has the powers mentioned," (those of making war and peace, purchasing lands from them, and fixing boundaries,) "without absurdity in theory and practice. For the Indian tribes are justly considered the *common friends or enemies of the United States*, and *no particular State* can have an exclusive interest in the management of affairs with any of the tribes, except in uncommon cases."

The Senate perceive the estimate that was formed of these State pretensions. The committee argue with conclusive energy, that to yield such powers to particular States, would not only be absurd in theory, but would in fact destroy the whole system of Indian relations—that this divided, alternate cognizance of the matter, by the States and by the Congress, could never be enforced, and would result in discordant and fruitless regulations. The grounds assumed in this able report are unanswerable. The committee regarded the subject as national, concerning the whole United States, of whom the Indians were the common friends or foes—that such a concern was too general and public in all its bearings, to be subjected to the legislation and management of any particular State. The Congress, therefore, assumed the entire jurisdiction and control of it. And after this report, we hear no more of State protests. They yielded their claims to a much safer depositary of this interesting trust. Sir, I take leave to say, that the sound, sensible principles of this report have lost nothing of their authority by time, and that every year of our history has confirmed their wisdom; as well as illustrated the justice and humanity of the Congress of '87.

The Convention that formed and adopted the Constitution, in their deliberations upon the security of Indian rights, wisely determined to place our relations with the tribes under the absolute superintendence of the general government, which they were about to establish. The proviso under the old compact, that had in ambiguous terms reserved to particular States an undefined management of Indian Affairs, was altogether discarded; and the simple, unqualified control of this important branch of public policy, was delegated to Congress, in the following clause of the Constitution: "Congress shall have power to regulate commerce with *foreign nations*, among *the several States*, and *with the Indian tribes*." An incidental argu-

ment, in favor of my views, cannot fail to strike the mind, on the face of this clause. The plea that is now, for the first time, urged against the Indians, rests upon the allegation, that the tribes are not distinct nations—that they compose a portion of the people of the States; and yet, in this great national charter, the work of as much collected wisdom, virtue and patriotism, as ever adorned the annals, or shed light upon the government of any age or country, the Indian tribes are associated with foreign nations and the several States, as one of *the three distinct* departments of the human family, with which the general government was to regulate commerce. Strange company, truly, in which to find those it now seems convenient to denominate a few poor, miserable savages, that were always the peculiar subjects of State sovereignty, mere tenants at will of the soil, and with whom it is "idle" to speak of negotiating treaties!

There was another subject, closely connected with this, that engaged the anxious deliberations of the great statesmen who composed the memorable Convention;—and this was the treaty power. To found this well, was a concern worthy of their first and best thoughts. The good faith of a nation was not to be pledged but on grave and great occasions: for when plighted, it brought the nation itself under obligations too sacred to be argued away by the suggestions of policy or convenience, profit or loss. They, therefore, subjected the exercise of this high function to two great departments of the government—the President and Senate of the United States. They required formalities to attend the exercise of the power, that were intended and calculated to guard the trust from rash and inconsiderate administration. But, these requisites complied with, and a treaty made and concluded, no retreat from its claims was provided or desired by the Convention. No, Sir. To shut up every avenue of escape—to compel us to be faithful, "Treaties" are declared, by the charter of our government, "*to be the supreme law of the land*, any thing *in the constitution or laws of any State* to the contrary notwithstanding." How could the inviolate character of a treaty be more effectually preserved? Let convulsions agitate the commonwealth—let the strifes of party shake the pillars of the political edifice—around the nation's faith barriers are raised, that may smile at the storm. And, Sir, if these guards fail; if these defences can be assailed and broken down; then may we indeed despair. Truth and honor have no citadel on earth—their sanctions are despised and forgotten; and the law of the strongest prevails.

Mr. President, I fear that I shall oppress the patience of the Senate by these details—but the subject is deeply interesting, and each successive year of our political history brings me fresh and strong proofs of the sacred estimation, in which Indian rights were always held. Sir, in the very next year that followed the formation of the Constitution, on the first of September, 1788, the encroachments of the whites upon the Indian territory, as guarantied to them by the treaty of Hopewell,

made with the Cherokees, as I have already stated, in 1785, caused a proclamation to be issued by Congress, of the date first mentioned, affirming in all things the treaty of Hopewell, and distinctly announcing, (I give the literal clause,) "*the firm determination* of Congress *to protect the said Cherokees in their rights*, according to the true *intent and meaning of the said treaty.*" And they further resolve, "that the Secretary of War be directed to have a sufficient number of the troops in the service of the United States, in readiness to march from the Ohio, *to the protection of the Cherokees*, whenever Congress shall direct the same."

The next important event, in connexion with the Cherokees, is the treaty of Holston, made with them on the 2d July, 1791. This was the first treaty that was negotiated with the Cherokees after the adoption of the Constitution. And it is only necessary to consider the import of its preamble to become satisfied of the constancy of our policy, in adhering to the first principles of our Indian negotiations. Sir, let it be remembered that this was a crisis, when the true spirit of the Constitution would be best understood. Most of those who framed it came into the councils of the country in 1789. Let it be well pondered, that this treaty of Holston was the public compact, in which general Washington, as a preparative solemnity, asked the advice of the Senate—and concerning which he inquired of that venerable body, whether, in the treaty to be made, the United States should solemnly guaranty the new boundary, to be ascertained and fixed between them and the Cherokees.

The preamble to this treaty I will now recite:

"The parties being desirous of establishing permanent peace and friendship between the United States and the said Cherokee nation and the citizens and members thereof, and to remove the causes of war, by ascertaining their limits, and making other necessary, just and friendly arrangements: the President of the United States, by William Blount, Governor of the territory of the United States of America south of the river Ohio, and Superintendent of Indian Affairs for the Southern District, *who is vested with full* powers for these purposes, by and with *the advice and consent of the Senate of the United States;* and the Cherokee nation, by the undersigned Chiefs and Warriors representing the said nation, have agreed to the following articles," &c.

The first article stipulates, that there shall be *perpetual peace and friendship* between the parties. A subsequent article provides, that the boundary between the United States and the Cherokees "shall be ascertained and marked plainly, by three persons appointed on the part of the United States, and three Cherokees on the part of their nation."

In pursuance of the advice of the Senate, by the 7th article of this treaty, "The United States *solemnly guaranty* to the Cherokee nation *all their lands not hereby ceded.*"

And after several material clauses, the concluding article suspends the effect and obligation of the treaty upon its *ratifi-*

cation " by the President of the United States, with the advice and consent of the Senate of the United States."

Now, Sir, it is a most striking part of this history, that every possible incident of form, deliberation, advisement and power, attended this compact. The Senate was consulted before our plenipotentiary was commissioned—full powers were then given to our commissioner—the articles were agreed upon—the treaty referred to the Executive and Senate for their ratification, and, with all its provisions, by them solemnly confirmed.

Mr. President, it requires a fulness of *self-respect* and self-confidence, the lot of a rare few, after time has added its sanctions to this high pledge of national honor, to attempt to convict the illustrious men of that Senate of gross ignorance of constitutional power; to charge against them that they strangely mistook the charter under which they acted; and violated almost the proprieties of language, as some gentlemen contend, by dignifying with the name and formalities of a treaty "*mere bargains to get Indian lands.*" Who so well understood the nature and extent of the powers granted in the Constitution, as the statesmen who aided by their personal counsels to establish it?

Every administration of this government has, with like solemnities and stipulations, held treaties with the Cherokees; treaties, too, by almost all of which we obtained further accessions of territory. Yes, Sir, whenever we approached them in the language of friendship and kindness, we touched the chord that won their confidence: and now, when they have nothing left, with which to satisfy our cravings, we propose to annul every treaty—to gainsay our word—and, by violence and perfidy, drive the Indian from his home. In a subsequent treaty between the United States and the Cherokee nation, concluded on the 8th July, A. D. 1817, express reference is made to past negotiations between the parties on the subject of removal to the west of the Mississippi; the same question that now agitates the country, and engages our deliberations. And this convention is deserving of particular notice, inasmuch as we shall learn from it, not only what sentiments were then entertained by our government towards the Cherokees, but also in what light the different dispositions of the Indians to emigrate to the west, and to remain on their ancient patrimony, were considered. This treaty recites, that application had been made to the United States, at a previous period, by a deputation of the Cherokees, [on the 9th January, 1809,] by which they apprized the government of the wish of a part of their nation to remove west of the Mississippi, and of the residue to abide in their old habitations; that the President of the United States, after maturely considering the subject, answered the petition as follows: "The United States, *my children*, are the friends of both parties, and, as far as can be reasonably asked, they are willing to satisfy the wishes of both. *Those who remain* may be assured of our *patronage, our aid, and our*

good neighborhood." "To those who remove, every aid shall be administered, and when established at their new settlements, we shall still consider *them as our children, and always hold them firmly by the hand.*" The convention then establishes new boundaries, and pledges our faith to respect and defend the Indian territories. Some matters, Mr. President, by universal consent, are taken as granted, without any explicit recognition. Under the influence of this rule of common fairness, how can we ever dispute the sovereign right of the Cherokees to remain east of the Mississippi, when it was in relation to that very location, that we promised our patronage, aid and good neighborhood? Sir, is this high-handed encroachment of Georgia to be the commentary upon the national pledge here given, and the obvious import of these terms? How were these people to remain, if not as they then existed, and as we then acknowledged them to be, a distinct and separate community, governed by their own peculiar laws and customs?

Further, Sir, it appears from this treaty, that the Indians who preferred to remain east of the river, expressed "to the President an anxious desire to engage *in the pursuits of agriculture and civilized life* in the country *they then occupied*," and we engaged to encourage those laudable purposes. Indeed, such pursuits had been recommended to the tribes, and patronized by the United States, for many years before this convention. Mr. Jefferson, in his message to Congress, as early as 1805, and when on the subject of our Indian relations, with his usual enlarged views of public policy, observes; "The aboriginal inhabitants of these countries, I have regarded with the commiseration their history inspires. Endowed with the faculties and the *rights of men*, breathing an ardent love of *liberty and independence*, and occupying a country which left them *no desire but to be undisturbed*, the stream of overflowing population from other regions directed itself on these shores. Without power to divert, or habits to contend against it, they have been *overwhelmed by the current or driven before it.* Now reduced within limits too narrow for the hunter state, humanity enjoins us to teach them agriculture and the domestic arts; to encourage them to that industry, which alone can enable them to maintain their place in existence; and to prepare them in time for that society, which, to bodily comforts, adds the improvement of the mind and morals. We have, therefore, liberally furnished them with the implements of husbandry and household use; we have placed among them instructors in the arts of first necessity; and they are *covered with the ægis of the law against aggressors from among* ourselves." These, Sir, are sentiments worthy of an illustrious statesman. None can fail to perceive the spirit of justice and humanity which Mr. Jefferson cherished towards our Indian allies. He was, through his whole life, the firm, unshrinking advocate of their rights, a patron of all their plans for moral improvement and elevation.

Mr. President, it will not be necessary to pursue the details of our treaty negotiations further. I beg leave to state, before

I leave them, however, that with all the southwestern tribes of Indians we have similar treaties. Not only the Cherokees, but the Creeks, Choctaws and Chickasaws, in the neighborhood of Georgia, Tennessee, Alabama and Mississippi, hold our faith, repeatedly pledged to them, that we would respect their boundaries, repel aggressions, and protect and nourish them as our neighbors and friends: and to all these public and sacred compacts, Georgia was a constant party. They were required, by an express article, to be submitted to the Senate of the United States for their advice and consent. They were so submitted; and Georgia, by her able representatives in the Senate, united in the ratification of these same treaties, without, in any single instance, raising an exception, or interposing a constitutional difficulty or scruple.

Other branches of our political history shed abundant light upon this momentous question. When the Congress of the United States directed its care to the future settlement and government of the vast and noble domains to the northwest of the river Ohio, ceded by the State of Virginia, among other matters, which were deemed to be vitally connected with the welfare of that region, was the condition of the Indian nations. The third article of the celebrated ordinance for the government of the Northwestern Territory, is in the following words:

"Religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The *utmost good faith* shall always be observed towards the Indians; their *lands and property* shall never be taken from them *without their consent;* and, in their *property, rights and liberty,* they never shall *be invaded or disturbed,* unless in *just and lawful wars, authorized by Congress;* but laws founded in justice and humanity shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them."

Sir, the more minutely we look into the proceedings of the Congress of 1787, the more deeply shall we venerate the wisdom and virtue, the largeness of views, and the political forecast, that blessed and illustrated the councils of our country. This solitary article would forever stand out, and alone sustain their reputation. We shall presently learn what concern was manifested by the State of Georgia, to spread the whole influence and control of this article over the cession, which she made to the Union, of the territory now composing the States of Alabama and Mississippi.

How can Georgia, after all this, desire or attempt, and how can we quietly permit her, "to invade and disturb the property, rights and liberty of the Indians?" And this, not only *not* "in just and lawful wars authorized by Congress," but in a time of profound peace, while the Cherokee lives in tranquil prosperity by her side? I press the inquiry—How can we tamely suffer these States to make laws, not only not "founded in justice and humanity," "for preventing wrongs being done to the Indians," but for the avowed purpose of inflicting the gross

and wanton injustice of breaking up their governments—of abrogating their long-cherished customs, and of annihilating their existence as a distinct people.

The Congress of the United States, in 1790, in an act to regulate trade and intercourse with the Indian tribes; and again, by a similar act in 1802, still in force, distinctly recognised every material stipulation contained in the numerous treaties with the Indians. In fact, Sir, these acts of legislation were passed expressly to fulfil our treaty stipulations.

These statutes refer to "*the boundaries*, as established by treaties between the United States and the various Indian tribes;" they next direct such "lines to be clearly ascertained, and distinctly marked"—prohibit any citizen of the United States from crossing these lines, to hunt or settle—and authorize the employment of the public and *military force* of the government to prevent intrusion, and to expel trespassers upon Indian lands. The twelfth section of this important law most wisely guards the great object of Indian title from all public and private imposition, by enacting, "that no purchase, grant, lease or other conveyance of lands, or of any title or claim thereto, from any Indian or nation, or tribe of Indians, *within the bounds of the United States*, shall be of any validity in law or equity, unless the same be made *by treaty or convention*, entered into *pursuant to the Constitution*."

I trust, Sir, that this brief exposition of our policy, in relation to Indian affairs, establishes, beyond all controversy, the obligation of the United States to protect these tribes in the exercise and enjoyment of their civil and political rights. Sir, the question has ceased to be—*What are our duties?* An inquiry much more embarrassing is forced upon us: How shall we most plausibly, and with the least possible *violence*, *break our faith?* Sir, we repel the inquiry—we reject such an issue—and point the guardians of public honor to the broad, plain path of faithful performance, to which they are equally urged by duty and by interest.

Here I might properly rest—as the United States are the only party that the Indians are bound to regard. But if further proofs be wanting to convince us of the unwarrantable pretensions of Georgia, in her late violent legislation, they are at hand, cogent, clear and overwhelming. This State, Sir, was not only a party to all these conventions with the general government; she made as solemn treaties with the Creeks and Cherokees for herself, both when a colony, and after she became a State. These form a part of her title—and are bound up with her public laws. On the first of June, A. D. 1773, she negotiated a treaty with these Indian nations, by the joint agency of the governor of the colony and the superintendent of Indian affairs; in which treaty, boundaries are established and cessions of land agreed upon. Again, on the 31st May, A. D. 1783, after her independence as a State, another treaty was concluded between the governor of Georgia and five of her most distinguished citizens, duly appointed by the legisla-

ture of the State, of the one part, and the chiefs, head men and warriors of the hordes or tribes of the Cherokee Indians, "*in* behalf of *the said nation*, on the other part." And in the first article of this convention, the distinct, independent existence of the Cherokees is acknowledged; for it provides, "that all differences between the said parties, heretofore subsisting, shall cease and be forgotten." Is it possible to contend, in the face of this document, that the Cherokees are under the jurisdiction of Georgia, when that State finds it necessary to negotiate for peace with them by all the forms of a regular treaty? But more than this—by the last article of this treaty, the Cherokees agree to cede, grant, release and quitclaim to Georgia, all the lands *up to a certain boundary line* defined in the said document: And until since the extraordinary usurpation of this State, in extending her laws over this nation, these treaty lines were respected, and never disputed.

In the year 1777, the States of Georgia and South Carolina met the Creek and Cherokee nations at Dewitt's Corner, for the avowed purpose of making a treaty of peace with them. Sir, if the greatest potentate of Europe had been a party, the preliminaries could not have been more formal or solemn. First are produced what are denominated "the Georgia full powers" delegated to her commissioners, to meet "the Indian Congress" to be held at Dewitt's Corner. Next appear "the South Carolina full powers," for the like purpose—and lastly, the Creek and Cherokee "full powers." These powers are opened and exchanged at this Congress, and a treaty is agreed upon by the plenipotentiaries, establishing peace, and future boundaries between their respective territories.

In many of the treaties made by the United States with the Cherokees and Creeks, large tracts of land were relinquished to us, which, by our compact with the State of Georgia, we received for her use. She never questioned, at those times, our right to treat for those lands, nor the right of the Indians to grant them; but gladly availed herself of such rich accessions to her domains, and proceeded very promptly to distribute them amongst her citizens. Now, it is a fundamental maxim in all codes of law, which acknowledge the obligations of equity and good conscience, that if a party is silent when these old-fashioned rules of upright dealing require him to speak, he shall forever thereafter hold his peace. The application of this sound and wholesome rule will instantly strike the moral apprehensions of every member of the Senate.

I am indebted to the State of Georgia for a clear and very satisfactory exposition of the nature of Indian treaties, and the obligations that arise from them. It is an authority for positions, which I have had the honor to maintain, of the greater weight, as it proceeds from the highest functionary of her government.* In February, 1825, the Creeks, by a treaty made with the United States, ceded all their lands to us within the geo-

* George M. Troup, now a member of the Senate of the U. S.

graphical limits of Georgia, for the use of that State. By an article in the treaty, it was provided that the United States should protect the Indians against the encroachments and impositions of the whites, until the removal of the Indians should have been accomplished, according to the terms of the treaty. The governor of Georgia, on the 22d day of March, of the same year, issued his proclamation, in which, after stating the conclusion of the treaty already mentioned, and the article in it for the protection of the Creeks, he proceeds:

"I have, therefore, thought proper to issue this, my proclamation, warning all persons, citizens of Georgia or others, against trespassing or intruding upon lands occupied by the Indians within the limits of this State, either for the purpose of settlement or otherwise, as every such act will be *in direct violation* of the provisions *of the treaty* aforesaid, and will expose the aggressors to the most certain and summary punishment by the authorities of the State, and of the United States. All good citizens, therefore, pursuing the dictates of *good faith*, will unite in enforcing the *obligations of the treaty* as *the supreme law*," &c.

The Senate perceive that this executive injunction founds its requirements, explicitly, upon the *faith* and authority of the treaty, as the *supreme law;* and this a treaty made with *Indians.* Yes, Sir, a treaty with a part of the very Indians now asserted by Georgia to be below the reach of treaties—poor abjects! with whom it is declared to be ridiculous and idle to speak of treating!

Sir, she cannot recall her proclamation. Give these sacred doctrines their full operation here; let their influence prevail in the eventful issue now opened for our decision; and the Indians, who are involved in it, will be satisfied. They have approached us with no other plea; they urge no other or higher considerations. They point us to the faith of treaties, and implore us, by the constitutional obligation of these national compacts, to raise around our ancient allies the effectual defences, which we have so often promised. Carry out these rules of public duty, and the Cherokee delegation, who have been waiting at your doors with anxious interest, will return to their home relieved from the burden that now sinks their spirits, and with the grateful conviction that the successors of Washington are still true to his memory.

Mr. President: What could have wrought this entire revolution in opinions? and in three short years? Our relations with the Indians have not changed. Condition and circumstance, claim and obligation, remain precisely the same. And yet, now, we hear that these Indians have been all the time, since Georgia had existence, a component part of her population; within the full scope of her jurisdiction and sovereignty, and subject to the control of her laws.

The people of this country will never acquiesce in such violent constructions. They will read for themselves; and when they shall learn the history of all our intercourse with these nations; when they shall perceive the guaranties so often re-

newed to them, and under what solemn sanctions, the American community will not seek the aids of artificial speculations on the requisite formalities to a technical treaty. No, Sir. I repeat it: *They will judge for themselves*, and proclaim, in language that the remotest limit of this Republic will understand—"Call these sacred pledges of a nation's faith by what name you please—*our word has been given, and we should live and die by our word.*"

If the State of Georgia is concluded, and morally bound to stay her hand from invading the lands or the government of the Indians, the States of Mississippi and Alabama are equally and more strongly obliged. They came into the Union after most of the treaties had been made; the former in 1816, and the latter in 1819. These obligations were liens upon the confederacy, and they must take the benefits with the burdens of the Union. They cannot complain of concealment or surprise. These conventions were all public and notorious; and the Indians under their daily view, in actual separate possession, exercising the rights of sovereignty and property.

Moreover, we have heard much of *constitutional* powers and disabilities in this debate. Sir, I proceed to demonstrate that both Mississippi and Alabama are, by a fundamental inhibition in the constitution of their government, prevented from extending their laws over the Indians.—When Georgia, in 1802, granted to the United States the territory that composes nearly the whole of these two States, she made it an express condition of the cession, that the States to be formed of it should conform to all the articles of "the ordinance for the government of the territory northwest of the Ohio," excepting one single article prohibiting involuntary servitude. When these States applied to the general government to be formed into Territories, this condition of the Georgia cession was remembered by all parties. Mississippi and Alabama, in the most deliberate manner, agreed to the condition, and assumed the articles of the ordinance as an integral part of their political constitution. When they afterwards proposed to us to be received into the Federal Union, acts of Congress were duly passed, authorizing them respectively to form a constitution and State government for the people within their territories, with this proviso—"That the same, when formed, shall be republican, and not repugnant to the principles of the ordinance of the 13th July, A. D. 1787;" and they were afterwards, upon duly certifying to Congress that they had conformed to those principles, and engrafted them into their constitution, admitted into the Republic. The third article of this ordinance I have already read and considered, and will only add, that human wisdom and skill could not have devised a more effectual safeguard for the Indian tribes, than is now incorporated into the laws and constitution of the States of Mississippi and Alabama.

It would have been well in these States to have reviewed their own origin; to have examined the sources of their power, before they rashly, and in disregard of principles that are es-

sential to their political existence, usurped dominion over a community of men as perfectly independent of them as they are of Mexico. And shall we, Sir, quietly submit to the breach of conditions, that we tendered as the indispensable terms of their admission; that were fairly propounded, and freely and fully accepted? Why, Sir, it appears to me, that the fulfilment of solemn contracts, the good faith of public treaties, the fundamental provisions of State constitutions, are to be regarded as matters of very trifling obligation, when they are all to be broken through to reach a feeble and unoffending ally. With a man of truth and honesty, such high considerations as address us, would supersede the occasion for argument; and how can *we* evade them without deep dishonor?

I have complained of the legislation of Georgia. I will now refer the Senate to the law of that State passed on the 19th December, A. D. 1829, that the complaint may be justified. The title of the law would suffice for such purpose, without looking further. After stating its object of *adding* the territory in the *occupancy* of the Cherokee nation of Indians to the adjacent counties of Georgia, another distinct office of this oppressive edict of arbitrary power is avowed to be, "*to annul all laws and ordinances made by the Cherokee nation of Indians.*" And, Sir, the act *does* annul them effectually. For the seventh section enacts, "that after the first day of June next, all laws, ordinances, orders and regulations, *of any kind whatever*, made, passed, or enacted by the Cherokee Indians, either in general Council, or in any other way *whatever*, or by any authority *whatever*, of said tribe, be, and the same are hereby declared to be null and void, and of no effect, as if the same *had never existed.*" Sir, here we find a whole people outlawed—laws, customs, rules, government, all, by one short clause, abrogated, and declared to be void, as if they never had been. History furnishes no example of such high-handed usurpation. The dismemberment and partition of Poland was a deed of humane legislation, compared with this. The succeeding clauses are no less offensive. They provide, that "if any person shall prevent, by threats, menaces, *or other means, or endeavor* to prevent any Indian of said nation, from emigrating, or enrolling as an emigrant, he shall be liable to indictment and confinement in the common gaol, or at hard labor in the penitentiary, not exceeding *four years*, at the discretion of the court;" and "if any person shall *deter, or offer to deter* any Indian, head man, chief or warrior of said nation, from selling or ceding to the United States, *for the use of Georgia*, the whole or any part of said territory, or prevent, or offer to prevent, any such persons from meeting in council or *treaty* any commissioner or commissioners on the part of the United States, *for any purpose whatever*, he shall *be guilty of a high misdemeanor*, and liable, on conviction, to confinement at *hard labor* in the penitentiary for not *less* than *four*, nor longer than six years, at the discretion of the court." It is a crime in Georgia for a man to prevent the sale

of his country—a crime to warn a chief or head man, that the agents of the United States are instructed "to move upon him in the line of his prejudices," that they are coming to bribe him to meet in *treaty* with the commissioner. By the way, Sir, it seems these *treaties* are *very* lawful, when made *for the use of Georgia.*

It is not surprising that our agents advertised the War Department, that if the general government refused to interfere, and the Indians were left to the law of the States, they would soon exchange their lands, and remove. To compel, by harsh and cruel penalties, such exchange, is the broad purpose of this act of Georgia, and nothing is wanting to fill up the picture of a disgraceful system, but to permit the bill before us to pass, without amendment or proviso. Then it will all *seem* fair on our statute books. It legislates for none but those who *may choose* to remove—while we know that grinding, heart-breaking exactions are set in operation elsewhere to drive them to *such a choice.* By the modification I have submitted, I beg for the Indian the poor privilege of a free exercise of his own will.

But the law of Georgia is not yet satisfied. The last section declares, "that no Indian, or descendant of any Indian, residing within the Creek or Cherokee nations of Indians, shall *be deemed a competent witness* in any court of this State, to *which a white person may be a party,* except such white *person resides* within the said nation." It did not suffice to rob these people of the last vestige of their own political rights and liberties. The work was not complete, until they were shut out of the protection of Georgia laws. For, Sir, after the first day of June next, a gang of lawless white men may break into the Cherokee country, plunder their inhabitants, murder the mother with the children, and all in sight of the wretched husband and father—and no law of Georgia will reach the atrocity. It is vain to tell us, Sir, that murder may be traced by circumstantial probabilities. The charge against this State is—You have by force and violence stripped these people of the protection of *their* government, and now refuse to cast over them the shield of your own. The outrage of the deed is, that you leave the poor Indian helpless and defenceless, and in this cruel way hope to banish him from his home. Sir, if this law be enforced, I do religiously believe, that it will awaken tones of feeling that will go up to God—and call down the thunders of his wrath.

The *end*, however, is to justify the means. "The removal of the Indian tribes to the west of the Mississippi is demanded by the dictates of humanity." This is a word of conciliating import. But it often makes its way to the heart under very doubtful titles; and its present claims deserve to be rigidly questioned. Who urges this plea? They who covet the Indian lands—who wish to rid themselves of a neighbor that they despise, and whose State pride is enlisted in rounding off their territories. But another matter is worthy of a serious thought. Is there such a clause in our covenants with the Indian, that, when we shall deem it best for him, on the whole, we may

break our engagements, and leave him to his persecutors? Notwithstanding our adversaries are not entitled to the use of such humane suggestions, yet we do not shrink from an investigation of this pretence. It will be found as void of support in fact, as the other assumptions are of principle.

It is alleged, that the Indians cannot flourish in the neighborhood of a white population—that whole tribes have disappeared under the influence of this propinquity. As an abstract proposition, it implies reproach somewhere. Our virtues certainly have not such deadly and depopulating power. It must, then, be our vices that possess these destructive energies—and shall we commit injustice, and put in, as our plea for it, that our intercourse with the Indians has been so demoralizing that we must drive them from it, to save them? True, Sir, many tribes have melted away—they have sunk lower and lower—and what people could rise from a condition to which policy, selfishness, and cupidity, conspired to depress them?

Sir, had we devoted the same care to elevate their moral condition, that we have to degrade them, the removal of the Indians would not now seek for an apology in the suggestions of humanity. But I ask, as to the matter of fact, how stands the account? Wherever a fair experiment has been made, the Indians have readily yielded to the influences of moral cultivation. Yes, Sir, they flourish under this culture, and rise in the scale of being. They have shown themselves to be highly susceptible of improvement, and the ferocious feelings and habits of the savage are soothed and reformed by the mild charities of religion. They can very soon be taught to understand and appreciate the blessings of civilization and regular government. And I have the opinions of some of our most enlightened statesmen to sustain me. Mr. Jefferson, nearly thirty years ago, congratulates his fellow-citizens upon the hopeful indications furnished by the laudable efforts of the government to meliorate the condition of those, whom he was pleased to denominate "our Indian neighbors." In his message to Congress on the 8th of December, 1801, he says; "Among our Indian neighbors, also, a spirit of peace and friendship generally prevails; and I am happy to inform you that the continued efforts to introduce among them the implements and the practice of husbandry, and of the household arts, have not been without success. They are becoming more and more sensible of the superiority of this dependence for clothing and subsistence over the precarious resources of hunting and fishing. And already are we able to announce that, instead of that constant diminution of numbers produced by their wars and their wants, some of *them begin to experience an increase of population.*"

Upon the authority of this great statesman, I can direct our government to a much more effectual, as well as more just and honorable remedy for the evils that afflict these tribes, than their proposed removal into the wild, uncultivated regions of the western forests. In a message to Congress on the 17th October, 1803, Mr. Jefferson remarks; "With many of the

other Indian tribes, improvements *in agriculture and household manufacture are advancing;* and with all, our peace and friendship are established, on grounds much firmer than heretofore." In his message of the 2d December, 1806, there is a paragraph devoted to this subject deserving of our most respectful consideration. The friends of Indian rights could not desire the aid of better sentiments than Mr. Jefferson inculcated, in that part of the message where he says;

"We continue to receive proofs of the growing attachment of our Indian neighbors; and of their disposition to place all their interests under the patronage of the United States. These dispositions are inspired by *their confidence in our justice*, and in the sincere concern we feel for their welfare. And as long as we discharge these high and honorable functions with the integrity and good faith which alone can entitle us to their continuance, we may expect to reap the just reward in their peace and friendship."

Again, in November, 1808, he informs the Congress that

"With our Indian neighbors the public peace has been steadily maintained; and generally, from a conviction that we consider them as a part of ourselves, and cherish with sincerity their rights and interests, the attachment of the Indian tribes is gaining strength daily, is extending from the nearer to the more remote, and will amply requite us for the justice and friendship practised towards them. Husbandry and household manufacture are advancing among them—more rapidly with the southern than northern tribes, from circumstances of soil and climate."

Mr. Madison, in his message of November, 1809, likewise bears his public testimony to the gradual improvement of the Indians. "With our Indian neighbors," he remarks, "the just and benevolent system continued toward them, has also preserved peace, and is *more and more advancing habits favorable to their civilization and happiness.*"

I will detain the Senate with but one more testimonial, from another venerable Chief Magistrate. Mr. Monroe, as lately as 1824, in his message, with great satisfaction informed the Congress that the Indians were "making steady advances in civilization and the improvement of their condition."

"Many of the tribes," he continues, "have already *made great progress* in the arts of civilized life. This desirable result has been brought about by the humane and persevering policy of the government, and particularly by means of the appropriation for the civilization of the Indians. There have been established, under the provisions of this act, thirty-two schools, containing nine hundred and sixteen scholars, who are well instructed in several branches of literature, and likewise in agriculture and the ordinary arts of life."

Now, Sir, when we consider the large space which these illustrious men have filled in our councils, and the perfect confidence that is due to their official statements, is it not astonishing to hear it gravely maintained that the Indians are retrograding in their condition and character; that all our public anxieties and cares bestowed upon them have been utterly

fruitless; and that, for very pity's sake, we must get rid of them, or they will perish on our hands? Sir, I believe that the confidence of the Senate has been abused by some of the letter-writers, who give us such sad accounts of Indian wretchedness. I rejoice that we may safely repose upon the statements contained in the letters of Messrs. J. L. Allen, R. M. Livingston, Rev. Cyrus Kingsbury, and the Rev. Samuel A. Worcester. The character of these witnesses is without reproach; and their satisfactory certificates of the improvement of the tribes continue and confirm the history furnished to us in the several messages from which I have just read extracts.

It is further maintained, "that one of the greatest evils to which the Indians are exposed, is that incessant pressure of population, that forces them from seat to seat, without allowing time for moral and intellectual improvement." Sir, this is the very reason—the deep, cogent reason—which I present to the Senate, now to raise the barrier against the pressure of population, and, with all the authority of this nation, say to the urging tide, "Thus far, and no farther." Let us save them now, or we never shall. For is it not clear as the sunbeam, Sir, that a removal will aggravate their woes? If the tide is nearly irresistible at this time; when a few more years shall fill the regions beyond the Arkansas with many more millions of enterprising white men, will not an increased impulse be given, that shall sweep the red men away into the barren prairies, or the Pacific of the west?

If these constant removals are so afflictive, and allow no time for moral improvement; if this be the cause why the attempts at Indian reformation are alleged to have been so unavailing; do not the dictates of experience, then, plead most powerfully with us, to drive them no farther?—to grant them an abiding place, where these moral causes may have a fair and uninterrupted operation in moulding and refining the Indian character? And, Sir, weigh a moment the considerations that address us on behalf of the Cherokees especially. Prompted and encouraged by our counsels, they have in good earnest resolved to become men, rational, educated, Christian men; and they have succeeded beyond our most sanguine hopes. They have established a regular constitution of civil government, republican in its principles. Wise and beneficent laws are enacted. The people acknowledge their authority, and feel their obligation. A printing press, conducted by one of the nation, circulates a weekly newspaper, printed partly in English, and partly in the Cherokee language. Schools flourish in many of their settlements. Christian temples, to the God of the Bible, are frequented by respectful, devout, and many sincere worshippers. God, as we believe, has many people among them, whom he regards as the "apple of his eye." They have become better neighbors to Georgia. She made no complaints during the lapse of fifty years, when the tribes were a horde of ruthless, licentious and drunken savages; when no law con-

trolled them; when the only judge was their will, and their avenger the tomahawk.

Then Georgia could make treaties with them, and acknowledge them as nations; and in conventions trace boundary lines, and respect the land-marks of her neighbor: and now, when they begin to reap the fruits of all the paternal instructions, so repeatedly and earnestly delivered to them by the Presidents; when the Cherokee has learned to respect the rights of the white man, and sacredly to regard the obligations of truth and conscience; is this the time, Sir, to break up a peaceful community, to put out its council fires, to annul its laws and customs, to crush the rising hopes of its youth, and to drive the desponding and discouraged Indian to despair? Although it be called a sickly humanity to sympathize with Indians—every freeman in the land, that has one spark of the spirit of his fathers, will denounce the proposed measure as an unparalleled stretch of cruel injustice—unparalleled certainly in our history. And if the deed be done, Sir, how it is regarded in heaven will, sooner or later, be known on earth; for this is the judgment place of public sins. And all these ties are to be broken asunder, for a State that was silent, and acquiesced in the relations of the Indians to our present government; that pretended to no right of direct interference, whilst these tribes were really dangerous; when their ferocious incursions justly disturbed the tranquillity of the fireside, and waked the "sleep of the cradle;"—for a State that seeks it now against an unoffending neighbor, which implores, by all that is dear in the graves of her fathers, in the traditions of by-gone ages; that beseeches by the ties of nature, of home, and of country, to let her live unmolested, and die near the dust of her kindred!

Our fears have been addressed in behalf of those States, whose legislation we resist: and it is inquired with solicitude, Would you urge us to arms with Georgia? No, Sir. This tremendous alternative will not be necessary. Let the general government come out, as it should, with decided and temperate firmness, and officially announce to Georgia, and the other States, that if the Indian tribes choose to remain, they will be protected against all interference and encroachment; and such is my confidence in the sense of justice, in the respect for law, prevailing in the great body of this portion of our fellow-citizens, that I believe they would submit to the authority of the nation. I can expect no other issue. But if the general government be urged to the crisis, never to be anticipated, of appealing to the last resort of her powers; and, when reason, argument and persuasion fail, to raise her strong arm to repress the violations of the supreme law of the land, I ask, is it not in her bond, Sir? Is her guaranty a rope of sand? This effective weapon, the sword in the hands of our national government, has often been employed to chastise the poor Indians; sometimes with dreadful vengeance, I fear; and shall not their protection avail to draw it from the scabbard? Permit me to

refer the Senate to the views of Mr. Jefferson, directly connected with this delicate, yet sacred duty of protection. In 1791, when he was Secretary of State, there were some symptoms of collision on the Indian subject. These produced the letter from him to general Knox, then our Secretary of War, a part of which I will read:

"I am of opinion, that government *should firmly* maintain this ground: that the Indians have a right to the *occupation of their lands, independent* of the States within whose *chartered limits* they happen to be; that, until they cede them *by treaty*, or other transaction equivalent to a treaty, no act of a State can give a right to such lands; that, neither under the present Constitution, nor the ancient confederation, had any State or persons a right to treat with the Indians, without the consent of the general government; that that consent has never been given by any treaty for the cession of the lands in question; that the government is determined to exert all *its energy* for the patronage and protection of the rights of the Indians, and the preservation of peace between the United States and them; and that, if any settlements are made on lands not *ceded by them*, without the previous consent of the United States, the government will think itself bound, not only to declare to the Indians that such settlements are without the authority or protection of the United States, but to *remove them also by public force*."

Mr. Jefferson seems to have been disturbed by no morbid sensibilities. He speaks out as became a determined statesman. We can trace in this document the same spirit which shed its influence on a more eventful paper—the Declaration of our rights, and of our purpose to maintain and defend them. He looked right onward, in the broad path of public duty; and if, in his way, he met the terrors of State collision and conflict, he was in no degree intimidated. The faith of treaties was his guide; and he would not flinch in his purposes, nor surrender the Indians to State encroachments. Let such decided policy go forth in the majesty of our laws now, and Georgia will yield. She will never encounter the responsibilities or the horrors of a civil war. But if she should, no stains of blood will be on our skirts—on herself the guilt will abide forever.

Mr. President: If we abandon these aboriginal proprietors of our soil—these early allies and adopted children of our forefathers—how shall we justify it to our country? to all the glory of the past, and the promise of the future? Her *good name* is worth all else besides that contributes to her greatness. And, as I regard this crisis in her history, the time has come when this unbought treasure shall be plucked from dishonor, or abandoned to reproach.

How shall we justify this trespass to ourselves? Sir, we may deride it, and laugh it to scorn now; but the occasion will meet every man, when he *must* look inward, and make honest inquisition there. Let us beware how, by oppressive encroachments upon the sacred privileges of our Indian neighbors, we minister to the agonies of future remorse.

I have, in my humble measure, attempted to discharge a public and most solemn duty towards an interesting portion of my fellow men. Should it prove to have been as fruitless as I know it to be below the weight of their claims, yet, even then, Sir, it will have its consolations. Defeat in such a cause is far above the triumphs of unrighteous power. And, in the language of an eloquent writer—"I had rather receive the blessing of one poor Cherokee, as he casts his last look back upon his country, for having, though in vain, attempted to prevent his banishment, than to sleep beneath the marble of all the Cæsars."

SPEECH

OF THE

HON. PELEG SPRAGUE,

SENATOR FROM MAINE,

DELIVERED IN THE SENATE OF THE UNITED STATES,
APRIL 16, 1830.*

THE following amendment to the Bill for the removal of the Indians being under consideration—

"*Provided always*, That, until the said tribes or nations shall choose to remove, as by this act is contemplated, they shall be protected in their present possessions, and in the enjoyment of all their rights of territory and government, as heretofore exercised and enjoyed, from all interruptions and encroachments—"

MR. SPRAGUE addressed the Senate as follows:

MR. PRESIDENT: The gentleman, who has just resumed his seat, (Mr. Forsyth,) has indulged in a wide range of remark in defence of his State against imputations which he supposed to have been elsewhere cast upon her. This course may have been very proper in him; I fully appreciate the motive which induced it. But I have no occasion to follow him; I have no wish to derogate in the least from the character of Georgia; but rather that it should be as elevated as her most devoted sons can desire. I shall speak of her so far only as may seem necessary to the free discussion of the subject before us.

This bill and amendment, and the discussion which they have produced, involve the question of the rights and duties of the United States with respect to the Indian tribes generally, but more especially the Cherokees. With that people we have not less than fifteen treaties. The first was made in the year 1785, and the last in 1819.

By several of these treaties, we have unequivocally guaranteed to the Cherokees that they shall forever enjoy—

1st. Their separate existence, as a political community;

2d. Undisturbed possession and full enjoyment of their lands, within certain boundaries, which are duly defined and fully described;

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* This speech was commenced on the 16th and closed on the 17th of April. On the 23d of the same month, Mr. Sprague made another vigorous attempt to arrest the bill, when he briefly and most powerfully urged again the great considerations in the case.

3d. The protection of the United States, against all interference with or encroachments upon their rights by any people, state, or nation.

For these promises, on our part, we received ample consideration—

By the restoration and establishing of peace;

By large cessions of territory;

By the promise, on their part, to treat with no other state or nation; and other important concessions.

These treaties were made with all the forms and solemnities which could give them force and efficacy, by commissioners duly appointed with full power. They were ratified by the Senate; confirmed by the President; and announced to the world, by his proclamation, as the binding compact of the nation, and the supreme law of the land.

The Cherokees now come to us, and say, that their rights are in danger of invasion, from the States of Georgia and Alabama; and they ask if we will extend to them the protection we have promised, and perform the engagements we have made. This is the question which they distinctly propound, and which we must unequivocally answer; and we are now discussing what our response shall be.

There is a broad line of distinction between the claims of Georgia and those of Alabama and Mississippi, which seems heretofore to have been unobserved, but which I shall endeavor to keep in view.

Let us first inquire what our duties are with respect to Georgia; for if her pretensions are unfounded, those of Alabama and Mississippi fall of course.

It is not necessary to determine whether the Indians have just grounds for their apprehensions or not, because the question is, whether *if* the rights secured to them by our treaties, *should*, at some future day, be invaded, we will perform our engagements.

But have they not some cause for their present alarm? In December, 1827, a committee of the legislature of Georgia made a report, accompanied by sundry resolutions which were accepted by both branches; and the resolutions also received the approval of the Governor. In the report we find the following language, respecting the territory of the Cherokees: "The lands in question *belong* to Georgia—she *must* and she *will* have them:"—and in the resolutions, the following:

Resolved, "That all the lands, appropriated and unappropriated, which lie within the conventional limits of Georgia, belong to her absolutely; that the title is in her; that the Indians are tenants at her will; that she may, at any time she pleases, determine that tenancy by taking possession of the premises; and Georgia has the right to extend her own authority and laws over the whole territory."

Resolved, "That Georgia entertains for the general government so high a regard, and is so solicitous to do no act that can disturb, or tend to disturb, the public tranquillity, that she will not attempt to enforce her rights by violence—until all other means of redress fail."

Resolved, "That to avoid a catastrophe, which none would more sincerely deplore than ourselves, we make this solemn appeal to the United States," &c.

It is thus asserted as the right, and avowed as the determination, of Georgia, to exercise absolute power over the Cherokees, and to take their land at all hazards—even by violence, if other means should fail.

The gentleman from that State, (Mr. Forsyth,) observed, in the commencement of his speech, that he felt himself bound in conscience to relieve his friend from New Jersey from all apprehensions of a violation of the faith of the nation, by demonstrating that the claims of Georgia were supported by treaties. And he proceeded to do so in language so strong, and tones so triumphant, as to make an evident impression upon members of the Senate. Let us deliberately examine his argument.

The first treaty referred to, was that of Galphinton, in 1785, by which certain concessions were made to Georgia. But that was by the *Creeks*, and by them only, and had no relation to the Cherokees.—

[Mr. FORSYTH explained, he had remarked upon that treaty in answer to the gentleman from New Jersey, (Mr. Frelinghuysen,) and not as bearing upon the rights of the Cherokees.]

Mr. SPRAGUE resumed. He was glad to receive the gentleman's explanation; it precluded the necessity of any further remark upon that topic.

The treaty next cited was that of Dewitt's corner, A. D. 1777, between South Carolina, Georgia and the Cherokees, by which the latter acknowledge that a portion of their country, extending as far as the Ocunna mountain, had been conquered; and they made a cession of the same by defined boundaries, to South Carolina, and to her only. The conquered and ceded territory lies wholly within that State; and it is not now, and has not been for at least one generation, either claimed or occupied by the Indians. What right can that confer on Georgia to lands now owned and possessed by the Cherokees?

The next position was that the right of his State was derived under the 9th article of the treaty of Hopewell, made between the United States and the Cherokees, in November, 1785; by which they gave to the United States the right of managing all their affairs. To this Georgia was no party. But the gentleman contends that the United States *transferred* all their power and claims, under the treaty, to that State, by virtue of the compact of 1802; and that we now cannot interfere with her pretensions. The clause in the compact, which is relied upon, is this—the United States "cede whatever claim, right or title, they may have to the jurisdiction or soil of any lands lying" within the limits of Georgia.

Does this relinquishment of the right of the United States to the soil and jurisdiction of the *lands*, purport to transfer a pre-existing *treaty* with the Indians? Was it so intended?

And if it had been, is the power which the treaty confers to legislate for their benefit in its nature transferable? The Article is in these words, "For the benefit and comfort of the Indians, and for the prevention of injuries and oppressions on the part of the citizens or Indians, the United States in Congress assembled, shall have the sole and exclusive right of regulating the trade with the Indians, and managing all their affairs in such manner as they think proper." The power given is strictly personal and fiduciary; to be exercised according to our judgment upon future events, and for their benefit. Can even a guardian transfer his rights and duties at pleasure? By the Constitution—the fundamental compact—Georgia has given to the United States the right to legislate in certain cases over her citizens for their benefit; for example, to organize, arm, discipline and call forth her militia. Can the United States transfer this right to South Carolina, or any other sovereign?

The express words of the Article require this right to be exercised by the United States "*in Congress assembled.*" Can we, without the consent of the other party, strike out these words, and insert—the *Legislature of Georgia?*

Again—in order to see that this power is properly exercised, the 13th Article secures to the Cherokees "the right to send a deputy of their choice, whenever they think fit, to *Congress.*" Shall he come here to watch over the legislation at Milledgeville?

But, if this power was in its nature transferable, it must be subject to the restrictions and limitations in the treaty contained; among which are the following:—

1st. That the Cherokees shall continue to exist as a distinct political community, under the protection of the United States:

2d. That they shall enjoy the undisturbed possession of their lands:

3d. That the power to manage "*their affairs*" shall be exercised "for the benefit and comfort of the Indians; and for the prevention of injuries and oppressions."

Did this give to the United States the right to drive them from all their lands?—or to destroy the Cherokee nation, to strike it out of existence; and, instead of managing for their "benefit," to annihilate "their affairs," as a body politic? Or could we convey a greater right than we ourselves possessed?

But this is not all. The gentleman passed over in utter silence a most important event, which intervened between the treaty of Hopewell and the compact of 1802. It is the treaty of Holston, made in 1791; by which the United States again promised the Cherokees to protect them in their rights as a nation; and the 7th Article holds the following language: "THE UNITED STATES SOLEMNLY GUARANTY TO THE CHEROKEE NATION ALL THEIR LANDS NOT HEREBY CEDED." If any right was transferred to Georgia, it would be such only as existed at the time, and subject, of course, to the stipulations of that pre-existing treaty.

There is still another view of this subject. Are we not bound to see that our treaties are fulfilled? The Indians say that their very existence was threatened; and inquire of us whether we will perform our solemn promise of protection. What shall we answer? That we have conveyed that promise to another!—that we have transferred our obligation to Georgia!—have given her a license to violate our treaties! May they not reply, that the very purpose for which they purchased our guaranty, and the protection of the strong arm of our government, was to secure them against the encroachments of their white neighbors in that State?

The compact of 1802, which has been so much insisted upon, was made between the United States and Georgia. The Cherokees were not parties, nor even assented to it. Of course it could not impair their rights, or confer upon others any claim against them. If I, Mr. President, should promise the gentleman that I would obtain your farm, and convey it to him—would that divest your title, or authorize either of us to wrest it from you by force? The compact itself expressly recognised "the Indian title," and the United States were to extinguish it only when it could be done "peaceably" and on "reasonable terms."

The gentleman having, as he supposed, fully sustained the treaty claims of Georgia, by the arguments upon which I have remarked, triumphantly *exclaimed*, "I will have my bond, I will have *my pound of flesh*."—A most unfortunate allusion, Sir; and one which I should not have been unkind enough to make. He will have his pound of quivering flesh taken from nearest the heart of the living man! But he will take it without one drop of blood.—

> ———"Ay—there's the rub;"
> For, in the cutting of that pound of flesh,
> What human blood shall flow—"must give us pause."

The fiend-like Shylock himself could not take the penalty of his bond, because "no jot of blood" was given. And none is given here, but the express contrary—"peaceably"—"peaceably"—and "upon reasonable terms" too, is the emphatic language. But against whom does the gentleman make his claim—the Indians? Does he hold their bond? No—they hold ours—they now present it to us, and demand its performance—and, "till he can rail the seal from off that bond," he cannot absolve us from its obligations. He declares that he will have the terms of his compact fulfilled to "the twentieth part of one poor scruple," and to the division of a hair. So be it; and let the Indians too have their guarantied rights maintained with equal scrupulosity.

The Hon. Chairman of the Committee on Indian Affairs (Mr. White) conceded that the United States had repeatedly pledged their faith to the Cherokees to interfere for their protection, but contended that we ought not to perform these stipulations of our treaties, because the claims of Georgia con-

flict with them. He laid down this proposition, that, if the United States had come into engagements inconsistent with each other, so that it was impossible to keep both, the one which was prior, in point of time, should be specifically performed, and ample compensation be made for the breach of the other.

To this position I freely assent; and upon this basis will rest the argument.

It is incumbent, then, upon the Hon. Chairman to show, in the first place, that our obligations to Georgia are *incompatible* with our treaties; and, in the next place, that they are of *prior date*. This, he and two gentlemen who followed him in the debate (Messrs. M'Kinley and Forsyth) have attempted to do. Their argument is, that, before the revolution, Great Britain had jurisdiction over the aborigines, and the sole right of treating with them, and that this power was wrested from her by *conquest* during the war, and forever abandoned by the treaty of peace in 1783.

I would first observe that, if it was obtained by conquest, it belonged to the *conquerors*. And who were the conquerors? The United States; who were also a party to the treaty of peace. Upon this ground it was, that New Jersey, Delaware, Maryland, and other States so strongly insisted that the crown lands, which had been acquired by the common arm and at the common expense, belonged of right to the common fund. Their demand to a great extent succeeded. The several States yielded to their pretensions by successive cessions; Virginia magnanimously taking the lead.

But, Mr. President, I shall not dwell upon this; for I mean, as far as possible, to avoid all debatable ground.

Concede then, for the present, that, when Georgia became independent, in 1776, she at once succeeded to all the pre-existing rights of Great Britain over the unmeasured forests within her chartered limits. What was that right? Gentlemen say it was the right of *discovery*.

Discovery, Sir, confers no claim or right against the *natives* —the persons *discovered*—but only against future *discoverers*. It is said, that the rights derived from this source were established and defined in Europe, upon the first discovery of this country. True; but it was by the mutual understanding and agreement of the nations of that continent only, in order to regulate their conduct among themselves. To prevent conflict and collision, it was tacitly agreed, that the sovereign, who should find a country, theretofore unknown, should have the exclusive right to the benefits of the discovery, and should be permitted, without interference from other European sovereigns, to conduct toward the aboriginal inhabitants according to his conscience and his ability. He had therefore, as against discovering nations who had assented to the arrangement, a conventional right *to wage war upon and conquer the natives*, and subject them to his sway. It is this right to which it is contended that Georgia succeeded upon the declaration of Inde-

pendence. Let it be so considered; and that in the war, which she should wage to subjugate the Indians, no other state or nation could rightfully interfere. But the people attacked had a right to resist. They surely were under no obligation to acquiesce in the proposed subjugation. Suppose, then, that they should happen to be too strong for their assailants; that they should roll back the tide of war—the hunters should be hunted—that those who came to conquer should be in danger of being conquered; and, in such emergency, the people of Georgia should call upon another State, Virginia for example, for protection and defence. Georgia would thus have waived her conventional right to exclude all others from her limits, and Virginia would, at her request, become a party to the war. Would not Virginia then have the right to make peace for the security of her own citizens, and must she not be bound by its terms? Was not France bound by her treaty of alliance with us during the revolution? Yet her interference was without the consent of Great Britain, the discoverer. Are not the United States now bound by their treaties with the states of South America?

But further, what if Georgia, in order to induce her neighbors to come in for her defence, had expressly agreed beforehand, that Virginia should have the sole power of conducting the war, and concluding the peace. Would not both States be bound by the treaty of peace thereupon made by Virginia? To proceed one step farther, suppose that this arrangement between the two States, instead of being occasional, should be established by a permanent compact; and that, in order to obtain the aid and protection of Virginia, at all times, against the attacks of the Indians, Georgia should agree that she never would herself provoke such attacks by making war upon them, and that, if it should arise, her more powerful ally should have the entire management of the war, and the exclusive right of agreeing upon the terms of peace and making the treaty.—Would not such terms be obligatory?

Now, Sir, such a compact was actually made by Georgia with Virginia and eleven other States, by the Articles of Confederation.

By the third Article, the United States are bound to assist the several States, "against all force offered to, or attacks made upon them, or any of them." And by the ninth Article, the United States have "the sole and exclusive right and power of determining on *peace and war*, except in the cases mentioned in the sixth article," and also of "entering into treaties."

Here is the express grant. What answer can be given to it? What reason can be assigned, why each State should not be bound by the stipulations of a treaty of peace? Will it be said, we could not have the relations of war and peace with the Indian tribes? Ask the relatives of Braddock and Butler, of Wayne, Harmar, and St. Clair, if Indians can wage war? Consult the crimsoned pages of your history, and they will answer you. Nay, to banish such a suggestion forever, that same

9th Article of Confederation expressly declares, that by war it means to include contests with Indians; for, by reference, it incorporates into it the 6th Article, which is in these words:

"Art. 6. No State shall engage in *any war* without the consent of the United States, in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution formed by some *nation of Indians* to invade such State, and the danger is so imminent as not to admit of a delay till the United States, in Congress assembled, can be consulted."

Here is also an unequivocal relinquishment by each State of the right to make war upon the natives.

During the revolution, war actually existed between the United States and the Cherokees. It continued to rage after the acknowledgment of our independence by Great Britain. Georgia needed our aid, and received it. The Indians were then powerful and terrific. The United States were desirous of peace; they sought it; and it was established in 1785, by the treaty of Hopewell, which has been already referred to. It secured to the Cherokees their previous right to exist as a community, upon the territory in their previous possession. Such a treaty would have been obligatory upon any State, if the Articles of Confederation had never existed; but by that compact a right was expressly given by Georgia herself to make it, and the United States were in duty bound to exercise that power.

And now I ask, what prior incompatible obligations to Georgia absolve us from its stipulations, or render it impossible to fulfil them?

Such was the power, and such the practice of the Confederation up to the time of the formation of our present Constitution, in September, 1787. No longer previous than the preceding month, we find a committee of Congress, in an able and elaborate report, declaring that the United States cannot interfere in behalf of a State against a tribe of Indians, "but on the principle that Congress shall have the sole direction of the war, and *the settling of all the terms of peace with such Indian tribe.*" And this language was addressed particularly to Georgia by name, and with respect to the Indians within her limits. This was in August.

The Constitution was formed in the following September. The 6th Article declares, that "treaties *made*, or which shall be made, under the authority of the United States, shall be the supreme law of the land"—"any thing in the constitution or laws of any State to the contrary notwithstanding." This was an express confirmation of the treaty of Hopewell; which had been made in November, 1785, less than two years before, and was then in full force.

The State of Georgia, with full knowledge that it had been so made, and that it was considered by the United States to be valid and obligatory, voluntarily adopted the Constitution, thereby herself most solemnly affirming and establishing that treaty; and, whatever may have been said before, never since that time, until recently, when the present controversy arose, has she in any manner denied its validity, or objected to its being carried into effect.

Such is the argument in support of the treaty of Hopewell. I shall leave it by adducing but one other proof of its validity, in the opinion of general Washington and the Congress of 1788, and their determination to enforce it with scrupulous fidelity. It is the proclamation of Sept. 1, 1788, which declares it to be "the firm determination of Congress to protect the said Cherokees in their rights, according to the true intent and meaning of the said treaty;" and a resolution was adopted to hold in readiness a sufficient number of troops to enforce that declaration.

Under our present Constitution, many treaties have been regularly made with the Cherokees. The first was at Holston, in 1791. The reasons, which have been adduced in support of the power to make the treaty of Hopewell are applicable to this with increased force.

The Constitution was formed because the Confederation was too weak to answer the purposes of the Union. It substituted a government in place of a mere confederacy, conferring upon it additional powers, and further limiting those of the individual States. By the articles of Confederation, the power of Congress to regulate the trade, and manage affairs with the Indians was subject to a proviso, that "the legislative right of any State within its own limits should not be infringed." This restriction is the only ground upon which doubts could ever have been suggested of the power of the Confederation to enter into treaty stipulations: it gave no countenance, however, to such suggestions, because it was a limitation upon another grant of power, distinct from that of establishing peace and making treaties. But even this restriction is omitted in the Constitution, and Congress are empowered to regulate commerce with the Indian tribes in unqualified terms.

The Constitution vests in the United States the sole and exclusive power of making war and concluding peace. It expressly provides, "that no State shall engage in war," or "enter into any treaty." Here is an unequivocal relinquishment of the right of Georgia to make war upon or treat with the Indians. And what is the right which it is said devolved upon her, as successor to the sovereignty of Great Britain? The right of a discoverer; that is, a right, as against others, and without their interposition, to attack, and by force subdue the natives; to make war for the purpose of conquest. But Georgia covenants, by our fundamental compact, not to engage in war for that or any other purpose; to attack no nation or political community.

The United States have the sole power of making *peace:* this can be done only by treaty. At Hopewell, in 1785, we made a treaty of peace. Open war had raged between the United States and the Cherokees up to that time. They had been the allies of Great Britain, but never had been ours, or in any manner contracted with us. Was not that treaty rightfully made and obligatory?

At Holston, in 1791, we made a treaty of *peace and friendship.*— It is so denominated on the face of it. It was the termination of an actually existing war: of this there is no doubt. The Chair-

man of the Committee of Indian Affairs, in his written opinion of 1824, states the fact, that war was raging. The gentleman from Georgia says, that his State applied to the United States for aid and protection in that war. The report of the Committee of Indian Affairs now before us declares, that the Cherokees waged war against the citizens of the United States. At Holston we then undeniably made a treaty of peace to terminate an existing war. The authority was express and exclusive. Are not the United States bound? Will they not abide by it?

The 1st Article is—"There shall be *perpetual peace and friendship* between all the citizens of the United States of America, and all the individuals composing the whole Cherokee *nation* of Indians."

"Article 7th—*The United States solemnly guaranty to the Cherokee nation all their lands not hereby ceded.*"

"Article 15th—All animosities for past grievances shall henceforth cease, and the *contracting parties will carry the foregoing treaty into full execution with all good faith and sincerity.*"

The question now is, Shall we carry these articles into effect with any good faith or sincerity?

Will it be pretended, that the United States might make peace, but had no authority to insert such stipulations as those I have quoted? Sir, the substance of these articles is of the essence of a treaty of peace. In every contract, each party recognises the separate existence of the other; and a treaty of peace—not a truce, not an armistice, not a temporary cessation of hostilities, but a treaty of peace, in its nature a permanent, enduring contract—must bind each party to respect the existence of the other, and never to assail or attempt its destruction—must obligate each to permit the other to continue that existence, upon its own territory, without attack or violence. To attempt to expel them by force, or subjugate or destroy their separate being, is a violation of the compact of peace, and a renewal of the war. In terminating hostilities, therefore, by their undoubted constitutional power, the United States, not only rightfully, but of necessity, embraced such terms as these.

But this is not all. The Constitution proceeds still further, and gives to the United States the general right to make *treaties*, not merely of peace, but all others. This power is not only clearly and positively conferred on the Union, but expressly inhibited to its several members. It has been repeatedly and continually exercised in relation to the Indian tribes within the United States, and that by the acquiescence and assent of Georgia herself.

I know it is said Georgia protested; and this has been repeated and insisted upon in every variety of form, as applicable to both the treaties, and all the questions which have been presented. Let us examine:

The first alleged protest was in Feb., 1786, prior to the treaty of Holston. It is the report of a committee, accepted by *the House of Representatives only.* The objections urged therein apply exclusively to the treaty of Hopewell, and must have rested

only on the ground of the reservation, before mentioned, in one of the Articles of Confederation, and which was omitted in the Constitution.

The next protest was in Feb., 1797. It makes no objection whatever to the treaty of *Holston*, and thereby impliedly approves and assents to it. It protests against two treaties with the *Creeks* made at New York and Coleraine, and the intercourse law of the United States. The grounds of objection insisted on are, that the intercourse law places the military above the civil authority, and prohibits pursuit and retaliation for Indian outrages; and that the Creeks, by the treaty of Galphinton, in 1785, confirmed by a subsequent treaty at Shoulderbone, had submitted themselves to Georgia, and become members of the State, and *ceded to her a tract of land, which had been actually organized into a county* by the name of Tallassee. And the State protests, "because the treaty of New York, in 1790, after the said cession being acted on constitutionally erected and laid out in a county, and the lands appropriated, *did sever, cut, and lop off the land so ceded* before the power of the federal Constitution existed, and EX POST FACTO declared they were vested in, and belonging to, the Creek nation of Indians; and because the said intercourse law and treaty of Coleraine have confirmed the same."

Their complaint is, substantially, that the United States had taken from Georgia lands which had "been duly ceded, fairly paid for, and legally and constitutionally laid out into a county." In conclusion, they "most fervently solicit a revision of the intercourse law and the New York and Coleraine treaties, and requiring a confirmation of the county of Tallassee to the State." And "they most earnestly solicit *the assistance of the United States to attain the cession of land* the treaty of Coleraine, they trust, was intended to establish." These protestations insist that the treaties of Galphinton and Shoulderbone were valid by reason of the before-named reservation in the Articles of Confederation; but no where deny, and by implication admit, the general right of the United States to make treaties with the Indian tribes, and guaranty to them the possession of their lands.

They do not breathe a whisper of objection to the treaty of Holston, of 1791, or to any of the powers involved in making it, but acquiesce therein.

In February, 1796, by an act of her Legislature, to which I shall hereafter recur, Georgia expressly declared, that the United States had the right to make treaties with the Indians—a right which they have continually exercised, and which she has never questioned, until this recent controversy arose. Not less than fourteen treaties have been entered into with this same Cherokee nation since the adoption of the Constitution; in 1791, 1792 and 1794, by general Washington; in 1798, by Mr. Adams; one in 1804, two in 1805, one in 1806, and one in 1807, by Mr. Jefferson; three in 1816, by Mr. Madison; one in 1817, by Mr. Monroe—general Jackson being the negotiator; and one in 1819, by the same President—Mr. Calhoun being the negotiator.

By more than half these treaties, large cessions of land were obtained, boundaries defined, and the remaining territory, and the protection of the United States, again and again guarantied to the Indians.

Shall Georgia now be permitted to deny their validity? If a man, seeing another in the act of making a deed of his land to a third person, shall stand by in silence, until the conveyance is completed, and the grantee has parted with his money, paid the consideration, would any Chancellor, that ever sat in a Court of Equity, permit that man to reclaim his property, and thus consummate a fraud on the fair purchaser? But suppose that he shall not only thus witness the conveyance perfected and the money paid, but himself receive the consideration: can he, with the fruits of the contract in his pocket, lay his hand upon the property, and wrest it from the innocent grantee? Georgia not only acquiesced, but actually received lands ceded by the Indians, and for which they obtained our promise of protection. I have in my hand some of her laws disposing of the acquisitions.—

The title of one is, "An act to dispose of and distribute the cession of land obtained from the Creek and Cherokee nations of Indians by the United States, in the several treaties of 10 August, 1814; 8 July, 1817; and 22 January, 1818."

And of another, "An act to dispose of the territory lately acquired of the Cherokee Indians, by a treaty held by the Honorable John C. Calhoun, at the city of Washington, on the 27th day of February, 1819." There are others of similar tenor.

And now, retaining these acquisitions, holding the proceeds of these treaties in her hands, she declares that they are not valid; thus, at the same moment, binding the Indians by their stipulations, and denying them the benefit of ours.

She has not only thus declared the right of the United States to make treaties, and assented to them when made, but has repeatedly urged that they should be entered into for the purpose of obtaining further acquisitions for her benefit; and, even as late as the year 1825, contended that the treaty of the Indian Springs with the Creeks was obligatory, and should be carried into effect.

And it was not until the Indians had firmly refused to assent to further cessions, and it was perceived that no more lands could be acquired by negotiation, that the doctrine arose, which denies to the United States the right to make these compacts.

Mr. President: What have the Senate heard to obviate the force of the facts and arguments which I have adduced? What answers have been given? I will advert to them all.

And first, as to the acts and acquiescence of Georgia, we have the reply in the report of the committee, that as she protested against the treaty of Hopewell, made in 1785, "no inference can be drawn to her disadvantage, from her *silence*, or from any thing *she may have said in relation to any subsequent treaty*, because, in each of them, a change was made, by which a portion of her territory and jurisdiction was restored to her, and thus her condition rendered better," &c. Who does not perceive that, under this form of

words of *restoring*—what she never possessed; but which belonged to the Cherokees, before she had a being—the substantial, real cause of her assent is alleged to be the *benefits which she received!* Yes, Sir; she did receive the fruits of these solemn contracts; by the establishing of peace and additions to her territories, in 1791; by the cessions of 1798, 1804, 1805, 1806, 1807, 1816, 1817, and 1819. And shall we be told that, because it was for her interest to be silent, *because* she was receiving the consideration of the compacts, therefore she now, after 20 years' assent, is under no obligation to abide by them!

The Hon. Chairman, in his opening speech, assigned several reasons why the United States could not constitutionally form such treaties. The first was, that "the creature could not possess power to destroy its creator." This expression is calculated to mislead the judgment, because it refers the mind at once to the relation in which we frail and feeble mortals stand to our Omnipotent Maker; and it would seem to be just as true to say—the creature cannot diminish the power of its creator. The gentleman applies it to the general government, as the work of the several States. Is it true that it cannot—that it does not, take any power from its several members? The argument is, that if the Union can secure to the Indians any portion of their territory by treaty, it may cede away a whole State. This would, indeed, as the gentleman must admit, be a gross and palpable abuse of authority. His reasoning, then, must be, that the United States cannot possess any power which, by perversion, may be exerted to the destruction of one of its members. Can they, then, make any treaty with a foreign nation? If so, there is the same danger of wrongfully transferring a State. Can they make war? It would be the readiest means of lopping off a member by leaving it defenceless. Can they organize, discipline, and call forth the militia, and control the whole physical strength of the nation? Sir, these are powers expressly inserted in the Constitution, and they are not to be argued out of it, by apprehensions of extravagant possible abuses.

The general government was formed by the States—and the creature, says the gentleman, cannot have power to destroy any one of its creators. The state governments, Sir, were formed by individuals. If any of these should be guilty of a capital offence, might he not say, in the language of the Chairman, You cannot take my life; it is impossible, in the nature of things, that the creature can have power to destroy one of its creators.

Again: It is argued that the existence of an Indian community within the *chartered* limits of a State is inconsistent with "*a republican form of government*," as guarantied, by the Constitution, to every State.

This argument has been much relied on. It was advanced by the Secretary of War, repeated by the Committee, and reiterated in the speech of the Chairman. If this be so, Mr. President, a most unexpected result follows; it is—*that Georgia has never yet had a republican form of government*—for there has never been a moment when such tribes did not exist within her borders. At the time of the adoption of the Constitution, this same Cherokee na-

tion was much more numerous, and held sway over a much wider region, than at the present time. Nay, the Constitution itself confirms the pre-existing treaty of Hopewell, which recognised and guarantied the separate existence of the tribe; and which is now contended to be incompatible with that fundamental compact. Is the existence of a body politic, which the Legislature cannot destroy, necessarily incompatible with a republican form of government? How is it with Dartmouth College, in New Hampshire, or the chartered cities of other States?

Another proposition derived from the same elevated source, and urged with equal vehemence here, is that these treaties cannot be valid, because the Constitution declares that "no *new* State shall be formed or erected within the jurisdiction of any other State, without the consent of the Legislature" thereof.

Sir, no one proposes to create a *new* State, but to *continue* an *old* tribe, or State, if you so please to denominate it. It is to keep faith with a political community more ancient than Georgia herself; it is to *preserve*, not to form anew. Here, again, I would observe, that this nation of Cherokees was as much a State at the time of the adoption of the Constitution as now, and had much greater power, and more extensive dominion; and that the treaty of Hopewell, which, this argument insists, formed a *new State since* the Constitution, and in violation thereof, was made two years before its adoption, and was confirmed and sanctioned by it.

We are next told, that the Constitution recognises the right of the respective State legislatures to extend their laws over, and annihilate these communities, by that clause in the first article, which provides that an enumeration of inhabitants as a basis of representation shall be made, "excluding Indians not taxed."

This provision undoubtedly implies, that there could be individual Indians subject to taxation, and therefore to be counted; it also expressly declares that there might be those within a State "not taxed."

There may have been, nay, there were, in some of the States, individual natives voluntarily residing within the white settlements, separate from any tribe, and freely subjecting themselves to the local laws. There were those, too, whose nation, as a body, had disappeared; and because these persons had, of their own accord, thus sought the State jurisdiction, does it follow that it could be extended over Indian nations, who had always resisted it, and with whom, at the moment this clause was written, and the Constitution formed, the United States had a treaty guarantying them against such taxation, and every other exercise of State authority over them? By what imaginable process could these words, "Indians not taxed," produce the magical effect of annulling the treaty of Hopewell, then existing in full force?

Let us substitute the word *aliens* for Indians. The clause would then exclude "aliens not taxed." Will it be contended that foreigners existing as a nation, with whom we had treaties, as such, would be subject to the laws of a State? Would it not apply exclusively to the aliens who had separated themselves from their nation, and mingled with our citizens?

As a last resort, and to me, Mr. President, it seems a desperate one, it has been earnestly contended by the gentlemen from Tennessee, Alabama, and Georgia, (Messrs. White, McKinley, and Forsyth,) that we cannot constitutionally make ANY treaty with any Indian nation within the United States—that the express power to make "treaties" does not embrace compacts or agreements with such communities.

Wherever, Sir, the relation of peace and war can exist, the United States must, of necessity, possess the right to make a treaty of peace. That this relation may exist with these native tribes has never yet been doubted, and will not at this day be questioned. No one will have the assurance, in the face of all history, in defiance of what is known by the whole world, to declare that our contests with the aboriginal nations are on their part insurrections, rebellions, subjecting them to be tried and executed as traitors. The Secretary of War will not say so, for he told the Cherokees, in April last, "Your people were at enmity with the United States, and *waged a war* upon our frontier settlements; a durable *peace* was not entered into with you until 1791." The Committee and its Chairman (Mr. White) will not tell us so, for their report, accompanying this bill, declares that the Cherokees *waged a war* against the citizens of these States, prior to the treaty of Holston, in 1791. Rebellion!—by those who never owed allegiance, and with whom, ever since our national existence, we have either had open war or subsisting treaties!

But, inedpendent of this power of peace and war, why does not the general authority to make treaties embrace those with the Indians? Gentlemen content themselves with a positive and earnest denial.

The word *treaties* say they, in the Constitution, does not mean compacts or contracts with Indian tribes. Why not? Did not those who formed and adopted the Constitution so understand it? To answer this question, we must ascertain how that word was used, and what were the ideas attached to it at the time, and anterior to its insertion in that instrument. This rule of construction is the foundation of all science. When any term is used by an author, it is understood to carry with it the ideas which he has previously affixed to it; that he denotes by it what he always has done. Hence, in the science of law, when the student has ascertained what a writer means by the words *fee simple*, or *larceny*, if he subsequently finds those words used by the same author, he attaches to them the same meaning.

These contracts with aboriginal communities have been denominated *treaties* from the first settlement of this country. It has been their peculiar and appropriate name, without even an *alias dictus*. Great Britain made *treaties* with the Indians; the several colonies formed many, and gave them the same appellation. The Continental Congress, from the time it first assembled, until it was merged in the present national government, uniformly called them *treaties*. They did so in 1775, 1776, 1778, 1783, 1784, 1785, 1786, 1787, 1788, and even to the day of the formation and adoption of the Constitution. We find them repeatedly and particularly men-

tioned in July, August and October, 1787; the Constitution being formed in September of the same year.

Nor is this all. In the articles of Confederation, power was given to make treaties. It had been repeatedly exercised in establishing our relations with Indian tribes; particularly the Delawares, the Six Nations, the Cherokees, the Choctaws, the Chickasaws, and the Shawnees; and on the first of September, 1788, was issued the proclamation of Congress and of general Washington to enforce the treaty of Hopewell.

The word *treaties*, thus invariably known and used, and which had received a practical construction under the Confederation, was inserted by the same great men in the Constitution of the United States. Could any one doubt its meaning? Did Georgia misunderstand it? She had herself made *treaties*, with all the forms of negotiation, through commissioners fully empowered, in 1773, 1783, and 1785. They were so denominated by her at the time and ever afterwards. On the 3d of August, 1787, a motion was made by Mr. Few, delegate in Congress from Georgia, seconded by Mr. Blount from North Carolina, to take measures to "explain and confirm all former *treaties*" with the Creek Indians.

There is as much evidence that this word was intended to embrace conventions with such communities as the Creeks or Cherokees, as those with transatlantic nations, such as France and Spain.

Contemporary exposition has always been deemed of great force in settling even the most difficult questions of constitutional law. Practice and precedent, too, have often been considered as decisive authority. Mr. Madison, who has, with so much justice, been denominated the great constitutional lawyer of this country, declared, in a message to Congress, that the question of the constitutionality of the Bank of the United States had been so settled by the sanction of the different departments of the government, that it was no longer to be agitated; and yet only one bank had then been chartered. If his argument had, in that instance, any force, it is here irresistible.

From the organization of the government down to this very session of Congress, the practice has been unbroken and invariable. We find these treaties made in 1789, 1790, 1791, 1792, 1794, 1795, 1796, 1797, 1798, and almost, if not quite, every year since. I have counted no less than one hundred and twenty-four Indian treaties formed under the present Constitution, being more than three for each year. If authority and practice can settle any question, this is at an end.

In 1790, general Washington delivered a speech to the Seneca Indians, some extracts from which I will now read:

I, the President of the United States, by my *own mouth*, and by a written speech *signed with my own hand*, and *sealed with the seal of the United States*, speak to the Seneca nation.

The general government only has the power to treat with the Indian nations, and any treaty formed and held without its authority will not be binding.

Here, then, is the security for the remainder of your lands. No State nor person can purchase your lands, unless at some public treaty held under the authority of the United States. The general government will never consent to your being defrauded; but it will protect you in all your just rights.

Hear well, and let it be heard by every person in your nation, that the President of the United States declares, that the general government considers itself bound to protect you in all the lands secured to you by the treaty of Fort Stanwix, the 22d of October, 1784, excepting such parts as you may since have fairly sold to persons properly authorized to purchase of you.

Again—

But your great object seems to be the security of your remaining lands, and I have therefore upon this point meant to be sufficiently strong and clear.

That in future you cannot be defrauded of your lands. That *you possess the right to sell, and the right of refusing to sell, your lands.* That therefore the sale of your lands in future will depend entirely upon yourselves.

But that, when you may find it for your interest to sell any parts of your lands, the United States *must be present by their agent, and will be your security,* that you shall not be defrauded in the bargain you shall make.

You now know that all the lands secured to you by the treaty of Fort Stanwix, excepting such parts as you may since have fairly sold, are yours, and that only your own acts can convey them away. Speak therefore your wishes on the subject of tilling the ground. The United States will be happy to afford you every assistance in the only business which will add to your numbers and happiness.

The United States will be true and faithful to their engagements.

Given at Philadelphia, 29th December, 1790.

GEORGE WASHINGTON.

By the President:

THOMAS JEFFERSON.

By command of the President of the United States of America:

H. KNOX, *Secretary for the Department of War.*

"The United States will be true and faithful to their engagements." Such was the solemn declaration of the father of his country, in the infancy of this republic. Heaven grant that his sacred promises may be kept, and his confident prediction verified. The question is now before us. No sophistry can evade, no ingenuity can elude it. Will "the United States be true and faithful to their engagements," or false and treacherous?

The Cherokees present this solemn interrogatory, and we must return a deliberate response. It seems almost as if their case had been formed for the purpose of determining whether it be possible to bind this nation by its plighted faith.

I have already referred to our repeated engagements by the sages of the revolution, in the Congress of 1785; by Washington and the constellation of brilliant names around him, in 1791, 1792, and 1794; by the elder Adams and his cabinet in 1798; by Mr. Jefferson, in four successive treaties, in 1804,

1805, 1806, and 1807; by Mr. Madison, in several formed in 1816; by Mr. Monroe, in 1817, general Jackson himself subscribing it with his own hand as commissioner; and by another in 1819, to which Mr. Calhoun affixed his name, as negotiator. All these treaties were ratified by the Senate, and sanctioned by every department of the government.

In 1794, that greatest and best of men, whose name we profess so much to venerate, and which should be, of all others, the highest authority to this Senate and to the nation, delivered a speech to the Chiefs and Warriors of the CHEROKEE nation, in which, speaking of the lands upon Cumberland, he says: "These have been confirmed by two treaties of Hopewell, in 1785, and Holston, in 1791." Again—"The treaties which have been made cannot be altered. The boundaries which have been mentioned must be marked and established, so that no dispute shall happen, *nor any white people cross over them.*"

In 1795, the governor of Tennessee, upon which State it is now asserted these treaties are not obligatory, wrote a letter to President Washington, in order to "prevent infractions of them," by encroachments upon the lands of the Indians. And as late as 1824, the gentleman from Tennessee, who reported this bill, (Mr. White,) gave an able and elaborate opinion in writing, in which he strenuously asserts and maintains their validity, and the rights of the Indians. He says,

"The Cherokees are to be considered as a nation, a community having a country distinctly marked out, and set apart for their use; that their interest is as permanent and fixed in it as the *pledge* and the *faith* of the United States can make it; inasmuch as they have solemnly guarantied it to them as a nation, without any limitation of time."

With reference to the treaty of Holston, he says, they are "to be viewed as a nation possessing all the powers of other independent nations, which are not expressly, or by necessary implication, surrendered up by that treaty." And again, "they have not surrendered the power of making municipal regulations for their own internal government."

But now that we, the United States, are called upon to "be true and faithful to these engagements," it is contended that they are not obligatory; and, in order to sustain that position, it is insisted that the Constitution gives no power to make treaties with Indian nations, within the United States, although every President of the United States, and the members of his cabinet, every administration and all the great men by whom it was surrounded and sustained, have formed and established such Indian treaties.

Every Senate of the United States, and, I believe, every member of every Senate, have ratified and confirmed such Indian treaties. Every House of Representatives of the United States, and, I believe, every member thereof, have affirmed and sanctioned them, by passing laws for their due execution, paying from year to year the annuities secured by them, and making appropriations to enable the President to form other

treaties. At this very session, the Senate has ratified new treaties; and, during the present month, we have made an appropriation to enable the President to form another, with the tribes in Indiana. While that bill was under discussion, an amendment was proposed, prohibiting the use of any part of the money therein granted, in *secret* presents to the Chiefs; and it was insisted by the gentlemen from Tennessee, Louisiana, and Illinois, (Messrs. Grundy, Livingston, and Kane,) that such a proviso, merely restricting the use of money which Congress was granting, would trench upon the high, independent, constitutional power of the President in negotiating treaties. Nay, the second section of *the bill now under consideration*, provides for the removal of "any tribe or nation of Indians, now residing within the limits of any of the States or territories, and with which the United States have existing treaties,"—and yet we are told, by the chairman, that such treaties cannot exist—that they are *no treaties*.

It is in effect asserted, that every President and every Senate have been guilty of usurpation in extending the treaty-making power beyond its legitimate objects; for if these contracts are not treaties, within the true meaning of the Constitution, they could be made only by the authority of *Congress*. But the President and Senate alone—the treaty-making power—have always negotiated them, ratified them, and by proclamation announced them to the nation, as the supreme law of the land. Every State legislature, and the whole people, have heard these annunciations, and looked on, during all these proceedings, in silent acquiescence.

Even in 1798, when all the acts of the general government, and particularly those of the executive, were scrutinized with the utmost rigor, it was never suggested, even in Virginia, where the discussions were most animated, that there had, in this respect, been any irregularity. But now, upon the pressure of an exigency, it is discovered, for the first time, that all has been wrong. The present occasion has brought with it new and peculiar lights, by which gentlemen now perceive what was in the minds and intentions of the framers of the Constitution, better than they did themselves. They were ignorant of their own work. The venerated fathers of the republic, and all the high and honored names, who have presided over its destinies, have been involved in deep darkness, and wandered in gross error!

I have thus, Mr. President, endeavored to present my views with respect to the claims of the State of Georgia. Whether we regard original principles of international law as applicable to the right of discovery—or the express powers conferred by the Articles of Confederation—or the confirmation of pre-existing treaties, by the adoption of the Constitution—or the authority vested by that instrument in the general government, and the renunciation of powers by particular States—the invariable practice and usage of the Union, and the acts, acquiescence, and assent of Georgia herself—it is manifest that we

are bound to perform our engagements to the Indians, and are under no incompatible and paramount obligations to that State.

But let us now, for the sake of the argument, make the violent supposition, that the pretensions of Georgia are well founded, and that the United States cannot rightfully fulfil their stipulations as against her. In that case, the States of Alabama and Mississippi would stand on very different ground. Their claims have been mingled and blended with those of the elder sister, as if they were precisely the same; and hers have been put forward as the only subjects of discussion, when, in truth, there is a broad line of distinction, which ought to be marked and remembered. For the sake of distinctness and brevity, I shall speak of Alabama alone.

It is conceded on all hands, as a fundamental proposition, that the United States are bound to fulfil their engagements to the Cherokees specifically, except when prevented by incompatible obligations, *prior in point of time.*

Now, Sir, the State of Alabama did not exist until the year 1819; when she voluntarily came into the Union after the fifteen treaties with this nation had been previously established and proclaimed as the supreme law of the land.

But it is said that Alabama was formed from territory once belonging to Georgia, and succeeded to all her rights. Without stopping to examine the difficulties attending such a supposed transmission of a right to resist treaties, it is sufficient to say, that, by the compact of 1802, Georgia ceded to the United States all her "right, title, and claim" "to the jurisdiction and soil" of all the territory now constituting Alabama and Mississippi. The whole right of Georgia, whatever it was, thus became vested in the general government, and so remained until 1819; during which time not less than eight of these treaties were made. Who could then contest their validity? Are our treaties valid with the nations in Florida, Arkansas and Michigan? Can we enter into engagements with any tribes within the boundaries of the United States, even beyond the Rocky Mountains, or any where upon this continent? Can we make the solemn guaranty proposed by this bill? If so, we are legally constrained by our promises to the Indians of Alabama, made before the existence of that State.

But this is not all. Still another insuperable difficulty presents itself to her claims to legislate over and destroy the Indian nations.

The following Article is a part of the fundamental law to which Alabama owes her being, and without which she cannot exist:

"The utmost *good faith* shall always be observed towards the Indians; *their lands and property* shall never be taken from them without their consent; and in their *property, rights,* and *liberty,* they never shall be *invaded* or *disturbed,* unless in just and lawful *wars authorized by Congress; but laws founded in justice and humanity shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.*"

This was originally a part of the 4th Article of the Ordinance respecting the Northwestern Territory, and was, by express reference, incorporated into the 1st Article of the Compact of 1802, and made a fundamental and perpetual condition in the Act of Congress which provided for the admission of Alabama.

What is the answer to all this? We have it from the gentleman from Alabama (Mr. M'Kinley). The compact of 1802, says he, was unconstitutional; Georgia could not transfer to the United States either soil or jurisdiction.

If this be so, the first consequence is, that the dispute between that State and the general government, respecting the ownership of the crown lands obtained by conquest, which that compact was supposed to have happily put to rest forever, by mutual and reciprocal cessions, could never be settled!

In the next place—that the combined powers of the State and of the Union cannot do that, under the Constitution, which the members individually might have done without the Constitution. It is an attribute of complete sovereignty to be able to convey and receive territory. It is insisted that this attribute, as between the States, is annihilated—although all powers not granted are reserved to the members. I will not say that such an effect could not be produced by the Constitution; but it is at least so extremely improbable, that those who contend for it, in any particular instance, should be required to show it clearly, which has not been done.

It is insisted by the gentleman, that no State can be subject to the restraining condition of the Ordinance referred to, because it is inconsistent with her constitutional equality with the other members of the Union.

That Ordinance was established in July, 1787. It declares that "The following articles shall be considered as articles of compact between the original States and the people and States of said territory, and forever remain unalterable, unless by common consent." Then succeeds an article embracing the clause before read, and which was incorporated into the compact of 1802. The Ordinance subsequently declares, that "The said territory, and the *States* which may be formed therein, shall forever remain a part of this confederacy."

This Ordinance and all its provisions were affirmed and established by the adoption of the Constitution, and thus that instrument itself contemplated that all the States, to be thereafter formed northwest of the Ohio, should be forever subject to those conditions; by which it is now contended, no one could ever be constitutionally restrained!

It is insisted by the gentleman from Alabama, (Mr. M'Kinley,) that Georgia could not transfer soil and jurisdiction to the United States; that the compact of 1802, attempting to do so, was unconstitutional and void; and that the tract of country, which it was intended to convey, remained a part of that State until the year 1819.

If the gentleman's doctrine is correct, this tract of country remains a part of Georgia still, she having never conveyed it.

Another consequence, Mr. President, would flow from this doctrine, which I should exceedingly deplore; it is, Sir, that *Alabama is not a member of this Union!* By the Constitution, no new State can be formed or admitted into the Union within the limits of an old one, without the consent of the latter. Now, Sir, Georgia has never consented to the admission of Alabama, except by the transfer of soil and jurisdiction by virtue of the compact of 1802. If that conveyance was inoperative, no consent has been given. If that compact was absolutely void, as the gentleman contends, it is a legal nullity, and he can hold no rights under it.

Congress, too, have never given their consent, except upon the basis of the binding efficacy of that compact, and upon the express condition that its requisitions should be the fundamental law of the new State. But, says the gentleman, Congress had no power to pass such a law. If so, the Act respecting the admission of Alabama was unconstitutional and void, and neither created nor admitted any new State.

The ingenious gentleman has reasoned so profoundly upon constitutional law, that he has argued himself and his colleague out of their seats in this Senate!—Now, Sir, against this I most seriously protest—they cannot be spared—we need the aid of their talents and experience.

How will the gentleman escape from the consequences which I have deduced? Will he contend that the compact and the law were valid and not valid at the same time? That they conferred rights, but could not impose obligations upon his State? Even if such an extraordinary position were assumed, how would it affect the present question? If he can infuse any degree of vitality into that which was dead before its birth, if he can make that compact efficacious as the consent of Georgia to Alabama's becoming a State, would it not also be effectual as her consent that the United States should exercise jurisdiction over the territory, so far as to make treaties with the Indian tribes? If, then, the gentleman will admit that Georgia assented to any thing, by virtue of that compact, she consented to the formation of these treaties, and thus they were valid by her authority before Alabama was brought into being.

As a dernier resort, the gentleman insists that the true construction of the language of the Ordinance gives all the right over the Indians for which his State contends, because the latter clause requires that "laws"—"shall from time to time be made for *preventing wrongs being done to them*, and for preserving peace and friendship with them;" that is, laws restraining the whites, our own citizens, from encroaching upon the natives, and thereby endangering the public tranquillity.

If Maine or New York should pass laws for "preventing wrongs being done to" the Canadians, "and for preserving peace and friendship with them"—would that give jurisdiction over the British provinces? But let us read the whole clause, the true construction of which confers this unlimited power.

"The utmost good faith shall always be observed toward the Indians;" which means that we may violate all our engage-

ments at pleasure!—"their lands and property shall never be taken from them without their consent;" that is, both may be taken by violence against their utmost resistance!—"in their property, rights, and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress;" there shall be laws for "preventing wrongs being done to them and for preserving peace and friendship with them;" the *true construction* of all which is—that a State may make war upon them at pleasure—deprive them of their lands—and annihilate their nation! To such arguments are gentlemen of great ability compelled to resort! I dismiss this topic, and proceed to another.

The rights of the natives, both natural and conventional, have been strenuously denied. What right, it is asked, have the Indians to the lands they occupy? I ask, in reply, What right have the English or the French, the Spaniards or the Russians, to the countries they inhabit?

But it is insisted that the original claim of the natives has been devested by the superior right of DISCOVERY.

I have already shown, that this gives no ground of claim as against the discovered; that it is a mutual understanding or conventional arrangement entered into by the nations of Europe, amongst themselves, to define and regulate their respective claims, as discoverers, in order to prevent interference and contests with each other; all agreeing, that the sovereign who should first find a new country should be left without interference from them, to deal with it and its inhabitants, according to his ability and his conscience.

But we are told, that *grants* from the king are the highest title, and have always been relied upon as such. True—as against other grantees from the crown, or against the government itself; but not as to the natives. If such a title gives any just claim as against them, then they are bound to yield to it; for to every right appertains a corresponding obligation.

Were the aborigines bound to yield to such pretensions? Suppose that, more than two centuries ago, when, in unbroken strength, they held resistless sway over this whole western world, a royal patentee, with his handful of followers, just landed on these shores, should have found himself in the midst of a powerful Indian nation. The council fire is lighted up, and sachems and warriors are assembled around it. He presents himself, and says to them—

"This country is no longer yours. You must leave the forests where you hunt, and the valleys where you live. All the land which you can see from the highest mountain is mine. It has been given me by the king of the white men across the waters. Here is his grant—how can you resist so fair a title?"

If they deigned any other reply than the war-whoop, their chief might say—

"The GREAT SPIRIT, who causeth the trees to rise from the ground toward the heavens, and maketh the rivers to descend from the mountains to the valleys—who created the earth itself, and made both the red man and the white man to dwell thereon—

gave this land to us and to our ancestors. You say you have a grant from your king beyond the waters—we have a grant from the King of kings, who reigns in heaven—by this title our fathers have held it for uncounted generations, and by this title their sons will defend it."

It has been strenuously argued, that the overflowing nations of Europe had a just claim to the occupancy of some portion of the vacant lands of the aborigines for their own subsistence.

The excessive population of China, and of Holland, have, at this day, the same ground of claim against the United States. May they, therefore, drive us even from our cities and villages, and take all our territory by force?—We permit them to come and possess, if they submit to our laws, and pay us for the soil. The Indians have been more liberal, having ceded both soil and sovereignty to hundreds of millions of acres. The Cherokees have no more to spare: they need the residue for themselves. Shall they be permitted to retain it?

To avoid, as far as possible, all questionable ground, I at present contend only that the Indians have a right to exist as a community, and to possess some spot of earth upon which to sustain that existence. That spot is their native land. If they have no claim there, they have no right any where. Georgia asserts that the lands belong to her—she must, and she will have them—even by violence, if other means fail. This is a declaration of a right to drive the Cherokees from the face of the earth; for if she is not bound to permit them to remain, no nation or people are bound to receive them. To that for which I now contend, the Indians possess not only a natural, but also a legal and conventional right. These two grounds of claim have been blended and confounded.

The rights which the United States have claimed with respect to the territory of the aborigines, have been two-fold; pre-emptive and reversionary—a right to purchase, to the exclusion of all others, and to succeed the natives, should they voluntarily leave the country or become extinct.

It will at once be perceived, that this is a right to exclude others from interference, but not to coerce the Indians. It leaves to them the perpetual undisturbed occupancy. They cannot indeed transfer their country to others—but this does not impair their *title*, although it may diminish its value in the market. It still belongs to them and their heirs forever. If a State should, by law, prohibit its citizens from making sale of their lands without the assent of the executive, would it destroy every man's title? Nay, the laws do now prevent conveyances to aliens.

The right claimed is merely to exclude all others from purchasing of the aborigines. It will be divested of much of its appearance of harshness toward them by recurring to its origin. It was the primitive agreement or mutual understanding between exploring nations, that whichever should first find a new country, should alone possess the privilege of dealing with the natives; and upon this ground the discoverer excluded others from becoming purchasers. He had the right of pre-emption. This

agreement trenched not upon the title of the aborigines; and as to its affecting the value of their lands, by preventing competition in the purchase, there would have been no purchaser but for the discovery.

There is no mystery in the international law of discovery. So far as it relates to this subject, it is the same as if five or six persons, being about to go in search of sugar lands in South America, should mutually engage that they would not interfere with each other in their purchases. Such agreement would do no wrong to the original owner.

The reversionary claim, as it may be denominated—although in strictness that cannot revert to another, which always belonged to the present possessor—is the necessary consequence of the exclusion of others from purchasing. It is merely a right of succession to lands of the Indians, when they shall have become extinct, or have voluntarily abandoned them by emigration; as the property of individuals sometimes escheats to the government for the want of heirs.

The right of the aborigines to the perpetual and exclusive occupancy of all their lands, has been always recognised and affirmed by the United States. It was respected by Great Britain before the revolution; as appears by the royal proclamation of 1763, in which all persons are commanded "forthwith to remove themselves" from lands, which, not having been ceded to or purchased by us, are still reserved to the said Indians; and, after reciting that individuals had practised fraud upon the natives, forbids private persons from making purchases, to the end that the Indians may be convinced of our justice; and provides, that if the said Indians should be inclined to dispose of the said lands, "the same shall be purchased only for us, in our name, at some public meeting or assembly of the said Indians, to be held for that purpose."

That right was recognised by the *Confederation;* as appears by the whole tenor of their proceedings; particularly their treaties, by which they purchased a part and guarantied the remainder; by the report of a Committee in August, 1787, which declares that the Indians have just claims to all occupied by and not purchased of them—and the proclamation of Congress in September, 1788, which has been already referred to.

That, under our present Constitution, the rights of the natives and the relation in which they stand to the United States are such as I have described, is clearly manifested—by the Speech of President Washington to the Senecas in 1790, from which I have already presented some extracts—and by the following explicit and deliberate letter of Mr. Jefferson, written to the Secretary of War in 1791—

"I am of opinion, that government should firmly maintain this ground: that the Indians have a right to the occupation of their lands, independent of the States within whose chartered lines they happen to be; that, until they cede them by treaty, or other transactions equivalent to a treaty, no act of a State can give a right to such lands; that neither under the present Constitution, nor the ancient Confederation, had any State or persons a right to treat with the

Indians, without the consent of the general government; that that consent has never been given to any treaty for the cession of the lands in question; that the government is determined to exert *all its energy for the patronage and protection of the rights of the Indians*, and the preservation of peace between the United States and them; and that, if any settlements are made on lands not ceded by them, without the previous consent of the United States, the government will think itself bound, not only to declare to the Indians that such settlements *are without the authority or protection of the United States, but to remove them also by the public force.*"

The same is also manifest by the intercourse law of 1790, forbidding all encroachments, by citizens of the United States, upon the "territory belonging to any tribe or nation of Indians—by many other statutes, particularly that of March, 1805—by all the treaties of purchase and cession—all the laws to carry them into effect and pay the consideration—and all the acts for enabling the executive to extinguish Indian titles."

The gentleman from Georgia (Mr. Forsyth) has referred to the correspondence at Ghent to sustain his denial of rights to the Indian tribes. He relied upon the views of the American commissioners in repelling the claims of the British. As it is sometimes more satisfactory to read for ourselves, than to take the construction of others, permit, me, Sir, to present to you an extract from that correspondence.

"Under this system the Indians residing within the United States are so far independent, that they live under their own customs, and not under the laws of the United States; that their rights upon the lands where they inhabit, or hunt, are secured to them by boundaries defined in amicable treaties between the United States and themselves; and when these boundaries are varied, it is also by amicable and voluntary treaties, by which they receive from the United States ample compensation for every right they have to the lands ceded. Such is the relation between them and the United States: that relation is not now created for the first time, nor did it originate with the treaty of Grenville."

And, subsequently, the treaty of Grenville was merely declaratory of the public law—on principles previously and universally recognised. To this, Sir, was subscribed the names of all our commissioners at Ghent.

The gentleman from Alabama, (Mr. M'Kinley,) to show that the natives had no title to the soil, cited the case of Johnson and McIntosh, decided by the Supreme Court of the United States, and reported in the 8th of Wheaton.

To see how precisely that case sustains my positions, let me read a few very short extracts from the opinion of the court, as delivered by Chief Justice Marshall. It declares that the right of the United States, or the several States, is subject to the Indian right of occupancy; that the original inhabitants are the rightful occupants of the soil, "*with a legal as well as a just claim to retain possession of it, and to use it according to their own discretion.*" And again, "it has *never been contended* that the Indian title amounted to nothing. Their right of possession has *never been questioned.*"

Georgia herself has recognised those established rights of the natives, and the relation they bear to the general government.

By a law, passed in 1796, respecting the vacant lands within her chartered limits, she held the following language: "the territory therein mentioned is hereby declared to be the sole property of the State, *subject only* to *the right of treaty* of the United States, to *enable* the State to *purchase* under its pre-emption right the *Indian title* to the same."—A most pregnant act of legislation. It expressly admits the Indian title—that the claim of the State is only to purchase under its pre-emption right—that even this she could not do, unless enabled by the United States—that the United States had the right of treaty with the Indians; and that the claims of Georgia were subject to that right.

In the compact of 1802, she stipulated, by reference to an Article of the Ordinance before mentioned, for the inviolability of the lands, property, rights and liberty of the Indians, upon the territory relinquished; and recognised their just claim to lands, in that which was retained, by the Article which binds the United States at their own expense, to extinguish the *Indian title* thereto, as early as it could be done peaceably and upon reasonable terms.

The titles of the Acts which I have read, and several others, speak of the lands therein disposed of as "acquired," "obtained," from the "Creek and Cherokee nations," by the treaties held by the United States.

Even the act of December last contains a plenary admission that the lands in question were never before subject to her jurisdiction. A part of the title is "to extend the laws of this State over"—"the territory now occupied by the Cherokees." The 6th section expressly *extends* the laws of the State over the same and the inhabitants thereof. Sir, does not the legislation of every State, of itself, operate upon all the country within its jurisdiction? The laws of Georgia were not before limited to any parts of the State; they were general—they covered the whole; and are now—*extended* over the residue!

We have heard a great deal in this debate of the right of CONQUEST; and are told that it is always recognised as valid by the judicial tribunals.

True, Sir, by those of the *conqueror*. How can they do otherwise? Suppose that Congress should now declare a war for the sole purpose of wresting Canada from Great Britain, and should succeed; could our own courts question this exercise of political power, and refuse to sustain our jurisdiction over the country, however iniquitous the acquisition? And if in this government, where the political sovereign is under the restraints of the Constitution, the courts cannot interfere, how could they in Europe, where this doctrine had its origin? There the legislative and political powers are unlimited. Even in England, the parliament is legally omnipotent; and who ever heard of a judicial court undertaking to annul any of its enactments?

Whatever may be the acquiescence of other nations in the exercise of power by a conqueror, it is no ground of just claim

as against the *conquered*.—They surely are not bound to submit, if new means of resistance can be found.

To give to conquest—to mere force—the name of right, is to sanction all the enormities of avarice and ambition. Alexander and Bonaparte are justified!—Britain has done no wrong, in sweeping India with the hand of rapine, and holding fifty millions of people in thraldom! All the cruelties of the Spaniards in South America—the crimes of Pizarro and Cortez—tracking the fugitive natives, in terror and dismay, with blood-hounds, to the caves of the mountains; and stretching their wretched monarch upon burning coals, to extort from him the secret of his treasures—are sanctified by the name of right! This right of conquest gentlemen contend is the legitimate offspring of the right of discovery. Sir, the pirates on the coast of Barbary and at Barataria exercise both. They find a ship alone upon the ocean—this is *discovery*. They capture her, and murder or enslave the crew—this is *conquest*. Both these *rights* are thus combined and consummated; and their validity will not, I presume, be questioned either by the *courts* of Barataria, or other bands of *similar conquerors*.

But even this miserable argument of conquest is not applicable to the Cherokees. They were not subjugated. The southern Indians had sixteen thousand warriors, with arms in their hands. They were powerful; their trade was war; they did not solicit peace. We sought for it, as appears by the resolutions of Congress, of May, 1783—and March, 1785. We obtained the treaty of Hopewell, in which gentlemen find the expressions, the "United States give peace" to the Indians, and "allot boundaries:" and, by a verbal criticism upon the English terms which *we* used, they logically deduce the rights of conquest! What did the unlettered Indian understand by those expressions, but that there was to be an end of war; and that his territory was to be sacred? The treaty contains many reciprocal stipulations of the "contracting parties." Will it still be contended that we are not bound by them because the other party was *conquered*—in other words, because we were the strongest? If the United States made terms of peace, should they not abide by them? If a besieged town capitulates, are not the articles of capitulation obligatory? When Bonaparte dictated treaties of peace in the capitals of the nations which he had overrun, was he not morally bound to observe them? They indeed might complain that the contract was made by constraint, when they were not free agents; but who ever heard of the stronger party claiming to be absolved from his engagements, because the other was subject to his coercion?

It has been repeatedly asked, Why not leave the Indians to the legislation of the State?

I answer, Because they protest against it; and they alone have the right to judge. They demand of us the protection which we solemnly promised.

Much has been said of their being untutored savages, as if that could dissolve our treaties! No one pretends, that they

are less cultivated now than when those treaties were made. Indeed, it is certain, that they have greatly advanced in civilization; we see it in the very proofs introduced by the gentleman from Georgia to show their barbarism. He produced to the Senate a printed code of Cherokee laws, and a newspaper issued from a Cherokee press! Is there another instance of such productions from any Indian nation? I was surprised, that, with all his scrutiny, he could find no more remnants of savage customs. I shall not dwell long upon his selections from their laws. The first was, that, if a horse should be stolen, and the owner, finding the thief in possession, should immediately kill him, in the excess of passion, it should rest upon his own conscience. It is to be observed that the person slain must have been guilty; and for such an offence, life is now taken by the laws of England. But this provision, inserted in the Cherokee code more than twenty years ago, has yielded to further light, and been since repealed. Time will not permit me to insist upon their advance in the arts of civilized life. It is known to have been great. They till the ground, manufacture for themselves, have work-shops, a printing press, schools, churches, and a regularly organized government. Indeed, the gentleman from Tennessee himself told us, that some individuals of that nation were qualified for seats in this august assembly.

What danger, it is asked, have the Indians to apprehend from the laws of the State?

What danger? Is it not here avowed, that their presence is a nuisance, from which Georgia wishes to be relieved? Has not her legislature declared, that she is determined to have their lands at all hazards, even by violence, in the last resort? And, if left to her unrestrained power, can it be doubted that she will find the means of carrying that determination into effect? If the laws heretofore enacted are not sufficient, may not others be resorted to? Let us, for a moment, look at the measures already adopted, and see if they have not some adaptation to the accomplishment of her wishes.

By the 9th section of the Act of 1828, no Indian in the Creek or Cherokee nations can be a party or a witness in any suit to which a white man may be a party. It is said that this has been repealed by the statute of 1829. I think otherwise. The latter contains no repealing clause, nor any incompatible provisions. Both may well stand together, and both would be enforced according to the usual construction of statutes *in pari materia*. It is true, that a part of the title of the act is, to repeal that 9th section of the former. This is easily accounted for. The act, as first reported by the committee, probably contained a repealing clause—which was stricken out by the more zealous majority—the original title remaining unchanged.

But suppose that only the law of 1829 is now in force. What is to be its effect? All the laws, usages, and customs of the Cherokees are abrogated, and severe punishments denounced against those who shall presume to act under them. Their

government is dissolved—their political existence is at an end—their nation is destroyed—it is resolved into its original elements! We know that their lands are not holden by individual ownership; the title is in the nation. To annihilate the tribe, therefore, as a political community, is to destroy the owner; and the State is then to take the whole by her claim of succession.

By this statute, no Cherokee, or descendant of a Cherokee, can be a witness against any white man, who does not reside within the "nation." This devotes their property to the cupidity of their neighbours; it leaves them exposed to every outrage, which lawless passions can inflict. Even robbery and murder may be committed with impunity, at noonday, if not in the presence of such whites as will become prosecutors or witnesses.

This, the gentleman from Georgia asserts, creates no new disability; that Indians are not competent to testify, by the common law, either in England or in this country. That I deny. They are good witnesses in both; and have been so, without question, ever since the case of the Gentoo, in the time of Lord Mansfield. Several were recently admitted by the courts of New York, in a very important question of title to real estate near the falls of Niagara; and I have myself seen a person convicted of larceny to a large amount, in the Supreme Court of Massachusetts, upon the testimony of an Indian.

But the gentleman assigned, as a reason for his assertion, that a belief in a future state of rewards and punishments was essential to their admissibility as witnesses. True, Sir; and so it is with respect to all others. The objection is as valid against a white as a red man. If this act creates no new disability, why was it passed? Why not leave them to the provisions of the common law? But, Sir, we learn from an intelligent missionary, that there are a thousand members of Christian churches.—These, and all other true believers, are excluded. Even those who are so distinguished for their knowledge, integrity and ability, that the honorable chairman would be willing himself to be represented by them, in the Congress of the United States, are not permitted to testify in a court of justice.

Under these enactments, the Cherokees are aliens—in their native land; trespassers—upon their own soil; outlaws—in the bosom of their own nation!

But why should I dwell upon the laws already passed, when the same power can, at will, produce others to effectuate the avowed determination? Who will pretend that the Indians can live under the legislation of the State? The head of the bureau of Indian Affairs, in a communication transmitted to Congress by the Secretary of War, declares that it will "seal their destruction, as admitted by their chiefs;" and the Hon. chairman has frankly declared in this debate, that it will reduce them to the last degree of wretchedness;—his words were—"you cannot make a full-blooded Indian more miserable" than by such subjection; and, in his written opinion of 1824, he emphatically says, if "the protection of the United States is withdrawn," "the Cherokee nation cannot exist twelve months."

The question now proposed by this amendment is, Shall that protection be withdrawn, and the Indians be compelled to leave their country under the penalty of certain destruction, if they remain?

The interrogatory has been often repeated, Why should not Georgia extend her laws over the natives as well as other States?

Again, Sir, I reply—Our treaties—our treaties. The Indians object, and the United States have solemnly promised to interpose at their request. In no other instances have they opposed State legislation, and demanded our interposition. This is a sufficient answer.

But this topic has been so much urged, and the effort has been so great to find shelter under the precedents of other States, that I will bestow upon them a moment's attention. That principally relied upon, and the only one specified, is a law of New York, passed four or five years ago. The occasion was this. In one of the little reduced tribes, within that State, a female had been executed as a witch. The executioner was indicted in the State court before one judge, and convicted. The question of jurisdiction was carried to the superior court, who never came to a decision, but advised a pardoning act; whereupon this law was passed, which punishes certain high crimes committed within the tribe. Its sole object was the protection of the Indians, and it seems to have been by their consent. They have never objected, much less claimed our interposition. Does this bear any analogy to the case of Georgia and the Cherokees? When another tribe, the Oneidas, formed a Constitution of Government similar to that of the Cherokees, did New York interfere to destroy it and dissolve the nation? Far otherwise; they protected them in its enjoyment. And such has been the general character of the legislation of other States. I shall not go back to the early days of colonial vassalage, although it is surprising that so little color of precedent is to be found, even when the weakness of infancy was struggling for existence against the power of the savages. I speak of the States, since they became such, under the Confederation, or the federal Constitution; and say that their general legislation has been—not over the Indians, and acting upon the individuals within the territory of their tribe, but protecting and preserving them as a distinct community—operating upon the whites, and restraining them from inflicting wrongs and injuries. The legislation of Georgia has thrown over them a net, which binds every limb in fetters, but is no shield of defence against assaults; whilst that of other States has erected around them a wall of defence, guarding them against encroachments.

This bill, Mr. President, provides for the removal of the Indians to distant regions, beyond the Mississippi; and it is proposed to place no less than half a million of dollars in the hands of the Secretary of War for that purpose. The amendment, now under consideration, declares that they shall be protected, in the enjoyment of their rights, until they shall choose to remove. The necessity for such a provision is apparent. Without it, they have

no option. Without it, this bill will add to the pressure of the torrent that is sweeping them away.

Is it not known that Acts for holding Indian treaties have been used as instruments of coercion? When our commissioners have met the chiefs in council to obtain further acquisitions of territory, have they not sometimes asked only, What will you *reserve*? And when the answer has been, We have no lands to spare—we will cede nothing; the question is repeated, What will you reserve?—Congress have passed a law for the purpose of obtaining a portion of your soil—the United States are strong—their arms now sleep in peace—beware how you arouse them from their slumbers!

Not only has terror been inspired, but other means have been used to cause the women to influence their husbands; the children to beseech their parents; the warriors to urge the chiefs; until their firmness is overcome. It is related of a venerable chief, that, yielding at last to this irresistible pressure, he signed the fatal parchment in tears—declaring at the time that it was the death-warrant of his nation.

Apprehending that our object is to obtain further cessions, the Indians have met us in council with fear and trembling. In one instance, five or six tribes being assembled, our commissioners announced to them that our only desire was to establish and preserve peace among themselves; that we asked for no lands.—They instantly rent the air with acclamations of joy. No difficulties, no delays intervened—the treaties were accomplished at once.

Is it uncharitable to suppose that agents, to be appointed under the direction of those, who are now concerned in our Indian affairs, may resort to force or terror?

Sir, the officer now at the head of the Indian bureau, in his official report of a treaty of cession, made by him with the Creeks, states the fact, that, in two successive councils, he met only a firm denial; and in the third, he says, one individual being most prominent in his opposition, it was not until he "broke him upon the spot" that the treaty was obtained! Yes, Sir, that officer avows that he "broke" one of the prominent chiefs in their own council, as the only means of accomplishing his purposes!

And in an official communication, sent to us by the Secretary of War, at the commencement of this session, the same officer recommends that the government should send an "armed force" to the Cherokee country, to further the objects of this bill—the removal of the natives. He says, indeed, that he would make a solemn declaration that the military were not to be used to compel them to leave their country, but only to give security to those that were willing to go. And would such a declaration, even if made, do away the effect of the presence of our bayonets? What is the avowed purpose? To protect, against their own government and people, the individuals who may choose to emigrate; but not to afford any aid or countenance to those that may choose to remain. The chiefs may inquire—Will these soldiers give us protection against the power of Georgia, if she shall attempt to force her laws upon us? The reply must be, Oh no—the Pres-

IDENT *has decided that she has a right to govern you;* and if you should resist, the United States are bound to assist her in the execution of her laws against all opposition. When the British minister remonstrated against the emperor Alexander's annexing a part of Poland to his dominions, he replied—I have three hundred thousand soldiers in that country. The argument was conclusive. If the Cherokees should hesitate, they might, in significant silence, be pointed to our glittering bayonets.

It is recommended to send an armed force to enable the Cherokees to deliberate freely!

When the Roman orator appeared in defence of Milo, he found the forum surrounded by an armed force, accompanied, no doubt, by the *declaration* that it was only to preserve tranquillity. But even the tongue of Cicero was palsied by the formidable array, and his friend and client was abandoned to his fate. We know, Sir, how the deliberations of the Parliament of Great Britain, and the National Convention of France, have been aided by the presence of an armed force; and history abounds with similar examples.

I confess, Sir, that I cannot but indulge fears of the use which may be made by the War Department, of the half million of dollars, to be appropriated by this bill. We do know, that, in making Indian treaties, there have been instances of valuable reservations of lands, and large sums of money being secretly given to individual chiefs, by confidential arrangements, to induce them to yield to our wishes, and betray the confidence reposed in them by their nation. Is it uncharitable to apprehend that such things may happen under the directions of the present Secretary of War?

Toward that high officer I have no feeling of unkindness. I seek no imputation upon his motives; but his official acts I am bound, by the duties of my station, to examine. Look at the instructions given by him, in May last, to general Carroll, who was sent as an agent of the government to induce the Cherokees to a removal. They express throughout much solicitude for the welfare of the Indians, and profess to consult their best interests. But I am constrained to look at the acts to be done—the course of conduct prescribed. He is directed not to meet the Cherokees in "general council," for "the consequence would be, what it has been, a firm refusal to acquiesce;" but to "appeal to the chiefs and influential men—*not together, but apart*, at their own houses; and to make *offers to them of extensive reservations in fee simple, and other rewards*," to obtain "their acquiescence." He is further told—the more *careful* "you are *to secure from even the chiefs the official character* you bear, the better;" and again—"Go to them *not as a negotiator*, but *friend*."

"Open to each a view of his danger. Enlarge on their comparative degradation as a people, and the total impossibility of their ever attaining to *higher privileges* while they retain their present relations to a people who seek to get rid of them"—that their laws "will be superseded and trodden under foot." Again—"Enlarge upon the *advantage of their condition in the west*—there the general govern-

ment *would* protect them—*improve them by instruction.*" They would become *our equals* in privileges, civil and religious; and that, "by refusing" to remove, "they must, necessarily, entail destruction upon their race."

I cannot but remark the parallel between the course here prescribed, and that which expelled our first parents from Paradise.

When the Arch Tempter sought their removal, he assailed them "*not together,*" lest their joint "*council*" should have baffled his arts; but found the feebler woman "*apart*" from her husband, deprived of the aid of her natural adviser—and, *carefully concealing his "official character"*—of Satanic Majesty; assuming the guise of a "*friend;*" a kind instructer; he said to her, Pursue the course which I advise, and the evils which have been predicted shall not follow!—"Ye shall not surely die"—but you shall be *enlightened and elevated*—"Your eyes shall be opened, and ye shall be as gods, knowing good and evil." She listened and yielded—

> "Earth felt the wound, and nature, from her seat,
> Sighing through all her works, gave signs of wo
> That all was lost."

She was then made the instrument of seducing the man also and both were driven from the garden of Eden, where their Creator had placed them, to the unsubdued wilderness of the world—and a flaming sword forever barred their return.

The adoption of such measures is, in the language of the military Secretary, to "move upon them in the line of their prejudices." And upon whom is it that we thus move? Those whom we have most solemnly promised to protect as faithful guardians; whom we have called brothers; whom we have taught to look up to the President, as their great father? Yes, we have endeavored to obtain over them the influence of a parent; but do we perform toward them the duties of that sacred relation?

It is said that we *must* resort to such measures; they are unavoidable. The plea of state necessity is advanced. And is this great country, with peace in all its borders, now controlled by an irresistible power, that knows no rule and consults no law? Does this measure wear the garb of *state necessity?* That, Sir, is a high-handed tyrant—not a smooth-tongued seducer. It is a lion, seizing its prey with open and resistless strength—not a serpent winding its sinuous way in secret to its victim.

Without the adoption of this amendment, the Cherokees have no choice, but between the miseries of emigration, and destruction where they are. It is contended, that it is for their best interest to remove. Leave that, Sir, to their own decision. Our judgment may be too much guided by our own convenience. We undertook to judge for the Seminoles in Florida. We asked for their fertile lands; they objected, asserting that the residue would not support existence. We persisted; and found means at last to obtain a reluctant cession. They departed, in the deepest sorrow, from their homes of comfort and plenty, to encounter want and misery upon a barren waste. Nineteen twentieths of

the territory which we left to them consisted of sands where no verdure quickened, and of swamps upon which human life could not be sustained. The dreary description officially given by governor Duval can hardly be exceeded. The consequence was, what the Seminoles foresaw—want, suffering, and starvation. The government was forthwith compelled to give twenty thousand dollars for food to preserve life, and to retrocede a portion of their territory.

Whither are the Cherokees to go? What are the benefits of the change? What system has been matured for their security? What laws for their government? These questions are answered only by gilded promises in general terms; they are to become enlightened and civilized husbandmen.

They now live by the cultivation of the soil, and the mechanic arts. It is proposed to send them from their cotton fields, their farms and their gardens, to a distant and an unsubdued wilderness—to make them tillers of the earth!—to remove them from their looms, their work-shops, their printing press, their schools, and churches, near the white settlements, to frowning forests, surrounded with naked savages—that they may become enlightened and civilized! We have pledged to them our protection; and, instead of shielding them where they now are, within our reach, under our own arm, we send these natives of a southern clime to northern regions, amongst fierce and warlike barbarians. And what security do we propose to them?—a new guaranty! Who can look an Indian in the face, and say to him, We and our fathers, for more than forty years, have made to you the most solemn promises: we now violate and trample upon them all; but offer you in their stead—another guaranty!

Will they be in no danger of attack from the primitive inhabitants of the regions to which they emigrate? How can it be otherwise? The official documents show us the fact, that some of the few, who have already gone, were involved in conflicts with the native tribes, and compelled to a second removal.

How are they to subsist? Has not that country now as great an Indian population as it can sustain? What has become of the original occupants? Have we not already caused accessions to their numbers, and been compressing them more and more? Is not the consequence inevitable, that some must be stinted in the means of subsistence? Here, too, we have the light of experience. By an official communication from governor Clark, the superintendent of Indian affairs, we learn, that the most powerful tribes, west of the Mississippi, are, every year, so distressed by famine, that many die for want of food. The scenes of their suffering are hardly exceeded by the sieges of Jerusalem and Samaria. There might be seen the miserable mother, in all the tortures which hunger can inflict, giving her last morsel for the sustenance of her child, and then fainting, sinking, and actually dying of starvation! And the orphan?—no one can spare it food—it is put alive into the grave of the parent, which thus closes over the quick and the dead! And this not in a solitary instance only.

but repeatedly and frequently. "The living child is often buried with the dead mother."*

Mr. President: I am aware that their white neighbors desire the absence of the Indians; and if they can find safety and subsistence beyond the Mississippi, I should rejoice exceedingly at their removal, because it would relieve the States of their presence. I would do much to effect a consummation so devoutly to be wished. But let it be by their own free choice, unawed by fear, unseduced by bribes. Let us not compel them, by withdrawing the protection which we have pledged. Theirs must be the pain of departure, and the hazard of the change. They are men, and have the feelings and attachments of men; and if all the ties which bind them to their country, and their homes, are to be rent asunder, let it be by their own free hand. If they are to leave forever the streams at which they drank, and the trees under which they reclined; if the fires are never more to be lighted up in the council house of their chiefs, and must be quenched forever upon the domestic hearth, by the tears of the inmates, who have there joined the nuptial feast, and the funeral wail; if they are to look for the last time upon the land of their birth—which drank up the blood of their fathers, shed in its defence—and is mingled with the sacred dust of children and friends—to turn their aching vision to distant regions, enveloped in darkness and surrounded by dangers—let it be by their own free choice, not as a consequence of our withdrawing the protection of our plighted faith;—an act, which would operate as the most oppressive and irresistible coercion. They can best appreciate the dangers and difficulties which beset their path. It is their fate which is impending; and it is their right to judge; while we have no warrant to falsify our promise.

It is said that their existence cannot be preserved; that it is the doom of Providence, that they must perish. So, indeed, must we all; but let it be in the course of nature; not by the hand of violence. If, in truth, they are now in the decrepitude of age, let us permit them to live out all their days, and die in peace; not bring down their gray hairs in blood to a foreign grave.

I know, Sir, to what I expose myself. To feel any solicitude for the fate of the Indians, may be ridiculed as false philanthropy and morbid sensibility. Others may boldly say, "Their blood be upon us;" and sneer at scruples as a weakness unbecoming the stern character of a politician.

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*Extract from an official Report of General Clark, Superintendent of Indian Affairs, dated March 1, 1826.

"The condition of many tribes west of the Mississippi is the most pitiable that can be imagined. During several seasons in every year, they are distressed by famine, in which many die for want of food; and during which the living child is often buried with the dead mother, because no one can spare it as much food as would sustain it through its helpless infancy. This description applies to Sioux, Osages, and many others; but I mention those because they are powerful tribes and live near our borders, and my official station enables me to know the exact truth. It is in vain to talk to people in this condition about learning and religion."

If, Sir, in order to become a politician, it be necessary to divest the mind of the principles of good faith and moral obligation, and harden the heart against every touch of humanity, I confess that I am not, and, by the blessing of Heaven, will never be—a politician.

Sir, we cannot wholly silence the monitor within. It may not be heard amidst the clashings of the arena; in the tempest and convulsions of political contentions;—but its "still small voice" will speak to us—when we meditate alone at even tide; in the silent watches of the night; when we lie down and when we rise up from a solitary pillow; and in that dread hour when—"not what we have done for ourselves, but what we have done for others," will be our joy and our strength; when—to have secured, even to the poor and despised Indian, a spot of earth upon which to rest his aching head,—to have given him but a cup of cold water in charity,—will be a greater treasure than to have been the conquerors of kingdoms, and lived in luxury upon their spoils.

EXTRACTS FROM A LETTER WRITTEN BY THE REV. CYRUS KINGSBURY TO THE WAR DEPARTMENT; DATED FEB. 8, 1830.

Those who are better acquainted with them, and who are able to compare their *present state* with what it *formerly* was, must admit that a great advance has been made. Comparing the present condition of the Choctaws, in those parts of the nation which have enjoyed the advantages of instruction, with what it was eight, or even five years ago, it may be doubted whether any considerable portions of the civilized world present specimens of equal improvement accomplished within the same space of time. In the statements which follow, I shall confine myself principally to facts, that the department may be able to judge for themselves as to the correctness of the above remark. Eight years ago, intemperance prevailed from one end of the land to the other. In the space of two months, ten Indians in this district alone lost their lives by whiskey. At this time, intemperance within the nation is hardly known.

In July, 1828, I attended the distribution of the annuity to two districts, on which occasion there were present from 4000 to 5000 Indians—men, women and children. They were together four days, and not an intoxicated one was seen, until after the business was closed. Some whiskey had been secreted at a distance from the place, and, as the law prohibiting the introduction of it into that part of the nation was not to go into effect until fifteen days from that time, some, after leaving the place, obtained it, and became intoxicated. Since that time, I am not aware that whiskey has been used at any council or collection of Indians, held by order of the chiefs for the transaction of business.

Other evidences of improvement we have in the increase of industry, and a consequent advance in dress, furniture, and all the comforts and conveniences of civilized life. It has been remarked by

many, that the fields of the Indians have never been kept in so good order, and managed with so much industry, as for the two past years. At councils and other large meetings, the Indians, especially in the northern and western districts, appear comfortably and decently, and some of them richly clad. A great desire is manifested to obtain furniture for their houses; and some are already supplied in a manner not inferior to that of new settlers in our own country.

The result of a census taken in 1828, in the northeast district, was as follows, viz: population, 5627; neat cattle, 11,661; horses, 3974; oxen, 112; hogs, 22,047; sheep, 136; spinning-wheels, 530; looms, 124; ploughs, 360; wagons, 32; blacksmiths' shops, 7; coopers' shops, 2; carpenters' shops, 2; white men with Choctaw families, 22; schools, 5; scholars in a course of instruction, about 150. In one clan, with a population of 313, who, eight years ago, were almost entirely destitute of property, grossly intemperate, and roaming from place to place, there are now 188 horses, 511 cattle, 353 hogs, 7 looms, 68 spinning-wheels, 35 ploughs, 6 oxen, 1 school, and 20 or 25 scholars.

The northeast district, in 1828, appropriated $1500 of their annuity for the establishment and support of blacksmith's shops. In 1829, they appropriated their whole annuity to similar objects. As an evidence of industry and public spirit, I would mention that in one neighborhood the natives have built a smith's shop, chopped wood for a large coal pit, and carried it on their backs to the place of setting; have built a house for their blacksmith, and cleared for him a field of twelve acres, all with their own hands; they have purchased with their annuity a set of tools, and iron and steel to the amount of $200, and have engaged to pay their smith $300 more annually for three years. Similar provision has been made for shops in other places.

Another evidence of the progress of improvement among the Choctaws is the organization of a civil government. In 1826, a general council was convened, at which a constitution was adopted, and legislative powers were delegated to a national committee and council, whose acts, when approved by the chiefs, became the supreme laws of the land. I have now before me a manuscript code, containing 22 laws, which have been enacted by the constituted authorities, and, so far as I know, carried into complete execution. Among the subjects embraced by these laws are theft, murder, infanticide, marriage, polygamy, the making of wills, and settling of estates, trespass, false testimony, what shall be considered lawful enclosures around fields, &c. &c.

SPEECH

OF THE

HON. ASHER ROBBINS,

SENATOR FROM RHODE ISLAND,

DELIVERED IN THE SENATE OF THE UNITED STATES,
APRIL 21, 1830.

THE Bill to provide for an exchange of Lands with the Indians residing in any of the States or Territories, and for their removal West of the river Mississippi, being under consideration, Mr. ROBBINS, of Rhode Island, addressed the Senate as follows :—

Mr. PRESIDENT: The whole argument in favor of this bill turns upon the question, whether the Indian nations, within our territorial boundaries, are competent to make treaties with the United States. For it makes no difference whether the Indian nation be within the chartered limits of a State, or out of those limits, if within the limits of the United States. If being within a State renders the Indian nation incompetent to make a treaty, the being within the United States makes them equally incompetent, the reason being the same in both cases; namely, the being within the jurisdiction of another power, and therefore, as the argument is, subject to that jurisdiction.

If these Indian nations are competent to make treaties, then the proposed law is unnecessary; as its object may be effected by treaty; and this law is not necessary to aid the Executive in making this treaty. And if these Indian nations are competent to make treaties, then this proposed law is not only unnecessary, but it is unconstitutional; for it is to make a treaty by the legislature; which can only be made by the Executive and Senate.

The turning question, then, of this whole debate, I repeat, is, whether the Indian nations within our territorial boundaries are competent to make treaties.

Before I proceed to discuss this question, I have to remark that it is matter of surprise that this question should be made, when it is now made for the first time. From the discovery of this new world by the old, down to this day, now more than three hundred years, the competency of an Indian nation, situated within the jurisdiction of another power, has never been made a question before. No jurist, no writer upon public law, has ever made it a question. But, through all that long tract of time, treaties upon treaties, and almost without number,

have been made with Indians thus situated; and not a doubt, in a single instance, has been expressed of their competency to be parties to a treaty. This is not denied on the other side; indeed, it is admitted, that the doctrine and the practice of all past time, for century upon century, has been, to consider these nations, thus situated, as competent to make treaties. But all this is regarded as if the whole world, from the beginning down to this time, had been benighted upon this subject; as if they had ignorantly supposed and believed that the Indian nations were competent to make treaties, when, in truth, they were not competent; that Great Britain had been in this deplorable state of ignorance, with all her statesmen; that our governments, both state and national, had been in this deplorable state of ignorance, with all their statesmen; that the jurists or writers upon public law, of all the world, had all been in this deplorable state of ignorance;—I say so regarded; for I do not perceive that this new opinion is advanced with any less confidence, or with any more diffidence, on account of that mass of authority and usage against it.

I have further to remark, that if indeed it be so, that these Indian nations, thus situated, are not, and have not been, competent to make treaties, then all the treaties made with them are nullities. If so, the consequences of that consequence would be enough, I should think, to make gentlemen pause a little, and even fear the success of their own argument; for the consequences would be such, that the whole body of the rights acquired by Indian treaties, or held under them, or derived from them, would be torn from their foundations; and the resulting evils would be incalculably great. I have said that, in that case, these treaties would be nullities, and who can doubt it? The President and Senate have the power to make treaties; but a treaty made with a party not competent to make it, is not a treaty; it is a compact, as distinguishable from a treaty; and the President and Senate are not competent to make a compact which is not a treaty; so that every such treaty is void, as a treaty, because the Indian nation was not competent to make it; and it is void as a compact, because the President and Senate are not competent to make it. If this be so, my honorable friend from Tennessee need not disquiet himself upon the subject of his contradictory obligations; for, upon his doctrine, these treaties have created no obligations upon the United States.

Again: I have to remark that if these Indian nations, thus situated, are not competent to make treaties, no more treaties can be made with them; that the treaties which have been made, and not ratified, if any such there be, must be rejected; treaties which have been proposed for the purchase and extinguishment of Indian titles, as that in Indiana for instance, must be abandoned: we are to get no more lands from them by treaty; if you are to get them at all, you are to get them by compact, and this compact to be made, not by the Executive and Senate, but by the Legislature. And, pray, how is the

Legislature to make such a compact? It would not be possible, I think, to overcome the difficulties to this mode of acquiring Indian lands.

And then, in case of future wars with those Indian nations, how are they ever to be terminated? and how are the relations of peace ever to be restored, without the intervention of treaties?

Can any one, then, wish to see established a doctrine fraught with these, and, it may be, with other equally unhappy consequences? I should hope not.

But if we must prove, what has never before been denied—what has always been admitted—admitted in theory, and in practice admitted—namely, that the Indian nations within our territorial boundaries are competent to make treaties—how is that competency to be made out?

I agree that an Indian nation, to be competent to make a treaty, must be a sovereignty; for that treaties, properly so called, can only be made by sovereigns with sovereigns: but for this purpose it is not material whether the sovereignty be dependent or independent. Sovereignty is all that is necessary to this competency. The honorable gentleman from Alabama (Mr. M'Kinley) said the sovereigns must be equal; but he will find no authority for that opinion, if, by equal, he meant any thing more than that both must be sovereign. A dependent sovereignty is still a sovereignty, and competent to make a treaty. I understood this to be admitted by the honorable gentleman from Georgia, in the outset of his argument; though I could not reconcile the subsequent part of his argument with this admission.

Now, what is sovereignty? It is to be *sui juris;* that is, to be subject, within itself, to no law but the law of its own making: externally it may be subject to another jurisdiction, and then it is a dependent sovereignty—to what degree dependent, will be learned from the treaty or treaties, by which it is made dependent, if so made by treaty. Now, this is the condition of every Indian nation in our country, *sui juris*, and therefore sovereign; but subject externally to another jurisdiction, and therefore a dependent sovereign. This has always been their condition since they ceased to be independent sovereignties. When, or where, I would ask, has any Indian nation been subject within itself to the law of another jurisdiction? I know of none; I have heard of none. If there be one, that one would be an exception from the rest, but would not affect the right of the rest: that one may have relinquished its right to be *sui juris;* and then it would not be regarded as an exception.

Now the fact of being *sui juris*, and always of having been so, constitutes the right to be so. I would be glad to know if any nation has, or ever had, a better title to be *jure sui juris* than the fact of being so, and of always having been so; than a present possession, fortified by a prescription that knows no beginning; that runs back as far as memory or tradition goes, and beyond where it is lost in that oblivion in which unknown times and their memorials are all buried. And such is the title of every Indian nation, now in fact *sui juris*, to be and remain *sui juris*. There

never was, there never can be, any better title to the right of being *sui juris*. To the validity of such a title, its acknowledgment by other sovereignties is not necessary; but if it were, there never has been a time in which it was not acknowledged by other sovereignties, or was denied by any other; but it is not necessary; for a right in present possession, fortified and sanctified by such a prescription as this is, stands on higher ground, much higher, than any acknowledgment by other sovereignties could place it. Unquestionably, then, these nations are *sui juris*, of right *sui juris*; therefore sovereign, therefore competent to make treaties.

A multitude of matters have been urged upon our consideration on the other side, not to disprove the fact of the Indian nations being at this moment *sui juris*, nor the fact that they always have been *sui juris*; for these can neither be disproved nor denied; but to prove that, though they are *sui juris de facto*, they are not *sui juris de jure*; not being aware, as it appears to me, that the fact constitutes the right.

It is said, for instance, that the crown of Great Britain claimed a right to this country by the right of discovery; that what was the right of the crown, is now our right, and therefore that the Indian nations are not *sui juris de jure*.

Now, what was the right as claimed by discovery? (I make no question of that right, for the time has gone by for making that question, except as a moralist or historian. Whatever was the defect of that right originally, time now has supplied that defect, as far as defect of right can be supplied by lapse of time.) But what was that right as claimed by discovery? It was this: a right to the domain of the country, subject to the right of occupancy by the Indian nations; and that occupancy to be without restriction as to mode, and without limitation as to time; with the right of alienation of their possessory title, restricted to the proprietor of the domain. This was the claim of the British crown, as founded on discovery: it was so defined and settled in the case referred to by the honorable gentleman from Alabama, (Mr. M'Kinley,) the case of Johnson and M'Intosh. It was so settled by the court, in that case, because it had been so settled by what had become the customary law of nations. But did the king of Great Britain claim, (for that is the important question,) did he claim these Indian nations as his subjects, over whom or for whom he had a right to legislate for their internal regulation? No, never; never was a claim of that kind advanced; never heard of; never thought of: that claim left them, as it found them, subject, within themselves, only to their own jurisdiction.

Besides this notorious fact, the right of pre-emption, claimed by discovery, is decisive to prove that the right of jurisdiction was not claimed. If the crown claimed these Indian nations as his subjects, why claim a pre-emptive right to their titles? Did any king claim a pre-emptive right to the land titles of his own subjects? Never. If discovery, then, is a good authority for what it claims, it is good for what it disclaims. It disclaims the right of jurisdiction over and for the Indian nations. It therefore affirms and confirms this right in them, and guaranties it to them. Is it

possible that the honorable gentleman from Mississippi can suppose that the case of Grenada is a case in point? That was the case of a conquest, and the conquest ceded by the treaty of peace to the conqueror, to be holden as a part of his dominions, and the people as a part of his subjects; and both have been so holden ever since.

It is said, again, that a State has a right to exercise jurisdiction over persons within its territorial limits, and, of course, over the Indian nation within its limits; and, therefore, that such Indian nation can have no right to exemption from that jurisdiction. If this State right was admitted, it would not disprove the Indian right; it would only prove that the two rights were incompatible, and that, if the State right is exerted and executed against the Indian right, the Indian right must be annihilated. That the Indian nation is placed within the limits of another jurisdiction, proves nothing against the Indian right, for that must be the situation of every Indian nation within our territorial limits. It is so, and was to be so, by the very claim originally made to the country, on which it was originally settled, and by which it is now held. This country was in the possession of these Indian nations; the British claim to it, as founded in discovery, was a claim to the domain of their country, subject to their right of occupancy. They, of course, must be situated in that domain. That domain was parcelled out into colonies, now become States; the Indian nations, of course, must fall within the limits of those States. So that, by our very claim to their country, they were to be, and to remain, within our jurisdiction, and exempt from that jurisdiction, and subject only to their own.

To strengthen this State claim against the Indian right, it is said that the State, within its territorial limits, has all the rights which the crown of Great Britain had within the same limits. But, as has been stated, the crown of Great Britain made no such claim against the Indian right. Happy will it be for these nations, if the claim of that crown is adopted by the States, as the measure of their claim, and if they will content themselves with it.

Still it is said that a sovereign, independent State has a right to jurisdiction over all its own population; and that these States were sovereign and independent when they adopted this Constitution; and that they did not surrender this attribute of sovereignty by that adoption. Admitting all this, it is still to be proved that an Indian nation within a State is a part of the population of that State. How can this be seriously pretended? The population of a State is the population which constitutes the community which constitutes the State, which is protected by the laws, and amenable to the laws, of the State as that community. But an Indian nation within a State is not a part of that community; is not protected by the laws, and amenable to the laws of the State, as a part of that community.

The population of the United States is taken periodically, by regular census; it is now about to be taken for the fifth time. Were the Indian nations within the United States ever included in any census, as a part of the population of the United States?

Never, as every one knows. And why not, if all persons within the limits of a sovereign jurisdiction are necessarily the subjects of that jurisdiction, as a part of the population under that jurisdiction?

The States pay direct taxes to the United States, in proportion to their numbers; that is, to their population. But are the Indian nations within the States included in that population? Never; they are expressly excluded by the Constitution of the United States. Then the States themselves, by adopting the Constitution, have defined what constitutes their own population, and have excluded from it these Indian nations.

Still it is insisted, and as a branch of the same argument, that the Constitution gives the Executive no authority to go within a State, and make a treaty with a part of its population. This is true; but an Indian nation within a State, as we have just seen, is not a part of its population. The power to make treaties, as given by the Constitution, is a general power, and may be exercised, at the Executive discretion, with any nation or people competent to make a treaty; and it is not material where that nation is situated or placed. If competent to make a treaty, our Executive is competent to treat with it.

Again, it has been said that, in several States in which is situated some tribe or remnant of some tribe of Indians, these States have subjected those Indians to State legislation. Without stopping to inquire how that fact is, and, if a fact, whether it has been with the will or against the will of these Indians,—it is enough to say, that if those States have undertaken that legislation over those Indians, against their will; and while they were a tribe, and *sui juris*; and when, up to that time, they had always been *sui juris*; that fact, instead of proving a right in that legislature, proves a wrong by that legislature; and, instead of disproving the Indian right, it proves a violation of that right. I trust it is too late in the day—a day so enlightened as this is—to contend that a fact which is a wrong, is a precedent to justify a similar wrong, and that a violation of right in one case becomes a warrant for a violation of right in all similar cases.

In the multitude of matters urged upon our consideration, to show that the Indian nations are not *sui juris de jure*, these are all which appear to me to have the appearance of argument; for, in the rest, I confess I cannot see even that appearance. It is said, for instance, (and I notice it as a sample of the rest; for it would be endless to notice them all in detail,) that the Indian is an inveterate savage, and incapable of civilization. Admitting this to be the fact—which I by no means do admit—what has it to do with the question, whether his nation is *sui juris*, and competent to make a treaty? Is the Indian right less a right because the Indian is a savage? or does our civilization give us a title to his right?—a right which he inherits equally with us, from the gift of nature, and nature's God.

The Indian is a man, and has all the rights of man. The same God who made us made him, and endowed him with the same rights; for "of one blood hath he made all the men who dwell

upon the earth." And if we trample upon these rights; if we force him to surrender them, or extinguish them in his blood; the cry of injustice will rise to the throne of that God, and there, like the blood of Abel, will testify against us. If we should be arraigned for the deed before his awful bar, and should plead our boasted civilization in its defence, it would, in his sight, but add deeper damnation to the deed, and merit but the more signal retribution of his eternal justice.

As to the civilization of the Indian, that is his own concern in the pursuit of his own happiness; if the want of it is a misfortune, it is his misfortune; it neither takes from his rights, nor adds to our own. As to his being an inveterate savage, and incapable of civilization, I do not believe it; in that respect, I believe he is like the rest of mankind. The savage state is the natural state of man, and that state has charms to the savage, which none but the savage knows. Man no where, at no time, ever rose from the savage to the civilized man, but by the spur of an absolute necessity; a necessity which controlled him, and could not itself be controlled: it was not until he could no longer live as a savage, or go where he could live as a savage, that he would submit himself to that incessant labor and severe restraint, which lies at the foundation of all civilization, and to which nothing but education and habit reconciles the nature even of civilized man. The wild and free nature of the savage, unaccustomed to involuntary and constant labor, and to the multiplied and severe restraints of civilized society, revolts at the idea of that labor and those restraints; and his strong repugnance to them can only be overcome, as I have said, by the force of an overruling necessity. I have said this, not that I disapprove or would discourage attempts at their civilization, but to account for the only partial success, if it has been only partial, which has attended those attempts, and, at the same time, to vindicate the Indian from the charge of incapacity for civilization, any further forth, than as it is applicable to all mankind, while in a savage state. That very necessity exists, and is beginning to exert its civilizing tendency where the tribes in question now are, but will no longer exist if they are removed, as is contemplated by this bill.

Again, it is alleged against one of these nations, situated not in one, but in several of these States, that they have been guilty of an act which forfeits their right to live independently of State jurisdiction, and which requires that the forfeiture should be immediately and rigorously enforced. It is the act of their having changed the form of their government for their own internal regulation. It seems that, to better their condition, and with a view to their own civilization, they have discarded that of the savage, and adopted the government of civilized man. And it is a government well devised to improve that condition, and insure that civilization; a government that is in itself a monument of wisdom; that speaks volumes in favor of their capacity for civilization, and of their advances therein; for it has every essential feature of a free and well-balanced government. It is evidently

not a work of blind imitation; for, while it has followed the best models, it has followed them only so far as they were adapted to its circumstances; and it is original so far as these circumstances required it to be so; and, where it is original, it is no less admirable than where it is imitative. Attentive to those circumstances, so far from assuming any powers inconsistent with its external relations, either to the United States or to the States, that government recognises and ratifies those relations exactly as they exist, and confines itself entirely to provisions for their own internal police. Sensible of the rude state of the people, and with a view to their civilization, it makes it the primary duty of the nation to provide the means of education, and to promote the acquisition and diffusion of knowledge. Indeed, all its provisions show a wise survey of the present, and a provident forecast for the future. Now, this new government is not to be tolerated for a moment. State legislation must come and abate it as a nuisance; and the nation are to be punished for this atrocious act, with the forfeiture, and forever, of every national right. They are not to be permitted even to resume the government they had discarded, and to live again as savages; but they are, at once and forever, to be subjected to the rule of another jurisdiction, never again to enjoy the right of self-government—a right which has come down to them from their fathers, through an unknown series of generations, and for an unknown series of ages; a right which they had used, but not abused—certainly not in the act which is made a pretext for its destruction.

Ill-fated Indians! barbarism, and attempts at civilization, are alike fatal to your rights, but attempts at civilization the more fatal of the two. The jealous of their own rights are the contemners of yours; proud and chivalrous States do not think it beneath them to take advantage of your weakness. You have lands which they want, or rather which they desire, for they do not want them; your rights stand in their way, and those proud and chivalrous States do not think it beneath them to destroy your rights by their legislation. Proud and chivalrous States do not think it beneath them to present to your feeble and helpless condition this alternative, either to abandon your homes, the habitations you have built, the fields you have planted, and all the comforts you have gathered around you, the homes of your fathers, and the sepulchres of the dead, and go far into the depths of an unknown wilderness, there to abide the destiny which may await you, or to surrender your rights, and submit yourselves to their power, but to expect no participation in their rights.

This is an alternative which has planted dismay and despair in every heart that palpitates in that nation; for they see their situation, and that nothing is left them but resignation to their fate. Within themselves, they have no resource; without, they have no hope. The guaranties of treaties made with the United States, the faith of a mighty nation pledged for their protection, which was their hope, is now their hope no more. Like the morning cloud, and the early dew, it has passed away; for the chief of that

mighty nation has been appealed to to make good that guaranty, but has been appealed to in vain. He has told them that he will not make it good, and that they must submit to that alternative.

But we are told they have deserved all this, because they have changed the form of their government. But has this changed their external relations with the United States or with those States? Not in the least. Not in any one possible respect. The new government, like the old, is made for their own internal regulation, and for that object merely. *Sui juris* as they are and always have been, they had a right to make the law for their own internal regulation, according to their own will, and to change it from time to time, according to that will. They have done this, and, in doing this, they have done no more than they had a right to do. If they now are a government within a government, at which such an outcry is made as justifying their destruction, so they always have been, and not more so now than they always have been. They have always been what the gentleman calls an *imperium in imperio*—dependent and without the external prerogatives of sovereignty, but still an *imperium*. But no matter—no matter how justifiable, how proper that change of government was, how strictly a mere exercise of right—they see and they feel that their doom is sealed—that the decree is gone forth, and will be executed.

The cry of the miserable Indian will not arrest it; the sympathy of this nation in that cry will not arrest it. That sympathy is not credited, or, if credited, is despised; and we are told here, and in a tone of defiance, too, that no power shall arrest it. My fears are, that no power *will* arrest it; none certainly will if this bill pass, and without this amendment; for then the executive will not arrest it. But if executed, and when executed, for one, I will say, that these Indians have been made the victims of power exerted against right; the victims of violated faith, the nation's faith; the victims of violated justice; yes, I call God to witness, of his violated justice.

EXTRACT FROM A REPORT OF JOHN L. ALLEN, SUB-AGENT AMONG THE CHICKASAWS, DATED FEB. 7, 1830.

The country is well watered, and is well adapted to the culture of cotton, corn, wheat, oats, peas, potatoes, beans, &c.

Cotton, beef and pork, are the principal articles for exportation. There will be cotton exported from the nation this year, probably to the amount of 1000 bales; beef and pork to no inconsiderable amount.

The proceeds from the sales of cotton, horses, beef, cattle, hogs, &c., after retaining a sufficiency for their home consumption, is generally applied to the purchase of necessaries and luxuries of life; to wit, slaves, sugar and coffee, as well as dry goods of various descrip-

tions, which are calculated to render them comfortable and ornament their persons.

The time has come when they no longer depend on the rifle for support, but it is used more for their recreation and amusement than for the means of sustenance.

Every head of a family cultivates the earth more or less, as his thirst for gain, or his imaginary or real wants increase.

Much to the honor of the Chickasaws, for the last eight years, the practice of the men, requiring the women to perform all the labor in the fields, is much changed; the men now (with a few exceptions) cultivate the earth themselves, while the female part of the family is engaged in their household affairs. They spin, weave, make their own clothing, milk cows, make butter, cheese, &c. They keep themselves decent and clean, and, in many instances, particular attention is paid to fashions that are in use by the whites.

It is their constant practice to appear in their best apparel at their public meetings; also when they visit the country villages in the white settlements.

Many of the Chickasaws profess Christianity. I attended a camp meeting, in November last, at the residence of the missionaries; divine worship was performed alternately by white and red men, in the English and Indian languages; and, for the first time, I saw the sacrament taken by the Indians. Every thing was conducted with the utmost good order and decorum.

As a nation, the men are brave and honest. The women (the half breeds in particular) are beautiful and virtuous; and I am of the opinion, that there has been greater advancements in civilization, in the *last eight* years, than there was in *twenty* previous.

I think the present state of education does not meet the wishes or expectations of the chiefs and head men of the nation.

Education is confined generally to the half breeds and youths generally of the first promise. There are, at this time, several white men that have identified themselves with the Indians by marriage, and several half breeds that have sufficient education to enable them to transact a considerable portion of the business for the nation.

The municipal laws of the Chickasaws consist in written laws or resolutions, commanding that which is right, and prohibiting that which they conceive to be wrong. Their laws are few, easily understood, and rigidly enforced, and are highly calculated to promote peace and good order among themselves.

SPEECH

OF THE

HON. HENRY R. STORRS,

REPRESENTATIVE FROM THE STATE OF NEW YORK,

DELIVERED IN THE HOUSE OF REPRESENTATIVES, SITTING AS A COMMITTEE OF THE WHOLE HOUSE, SATURDAY, MAY 15, 1830, ON THE BILL FOR THE REMOVAL OF THE INDIANS.

Mr. CHAIRMAN: If I believed that the real object and only effect of the bill were to further the policy of providing a country beyond the Mississippi for such of the Indian tribes as might be inclined, of their own free choice, to remove there, I should have cheerfully given my support to the measure; for I heartily respond to the opinion expressed by the honorable member at the head of the committee on Indian affairs, who spoke yesterday, (Mr. Bell,) that no philanthropic man can look at the condition to which these unfortunate people have become reduced by a combination of circumstances, which now press upon them in some quarters with intolerable severity, without fervently wishing that they were already removed far beyond the reach of the oppression, and—I was about to say—the example of the white man. I hope that I am too well aware of the responsibility of the country to the opinion of the world, and too sensible of the duties we owe to these people, to be found resisting any measure here, which may really improve their condition, or encouraging them to reject any propositions of the government, which may be offered to them for their free acceptance or refusal. But, Sir, although the bill now before you presents nothing on its face, which, on a superficial examination, appears to be objectionable, yet we cannot shut our eyes, if we would, to the circumstances which have brought this subject before us at the present session. The papers before the house have convinced me, that it is chiefly intended and expected to come in aid of the measures recently taken by the States along the southern line of the Union, for removing the Indian nations within their limits from the country which they now occupy; and finding a purpose so unjust to these people, and so mischievous to the reputation of the country, lurking under it, I cannot give it my countenance or support.

I shall leave it entirely to others to examine that policy which affects to improve the moral condition of the Indians by removing them into the western forests; and dismiss that part of the subject with the single remark, that the President has furnished us, in his message at the opening of the session, with

a fair commentary upon that scheme of Indian improvement. He says that,

"Professing a desire to civilize and settle them, we have, at the same time, lost no opportunity to purchase their lands, and thrust them further into the wilderness"—that, "by this means, they have not only been kept in a wandering state, but been led to look upon us as unjust and indifferent to their fate. Thus, though lavish in its expenditure upon the subject, government has constantly defeated its own policy; and the Indians in general, receding farther and farther to the west, have retained their savage habits."

He then recommends to us that we should set apart an ample portion of our western territory, beyond the limits of Missouri and Arkansas, for the reception of all the tribes of Indians now within the States—about sixty thousand—secure them the country, where he says they may enjoy governments of their own choice, and where "the benevolent may *endeavor* to teach them the arts of civilization, and, by promoting union and harmony among them, to raise up an interesting common wealth, destined to perpetuate the race and to attest the humanity and justice of this government."

We are fortunately able, Sir, to ascertain clearly the state of things which has induced the Executive to recommend this policy to us so earnestly at the present time. There can be no mistake in the history of our relations with certain Indian nations, which has brought this subject before us. It is fully spread upon the official documents of the House for some few years past; and I shall proceed to call your attention to such parts of them as, I trust, will lead us to the only safe and honorable conclusion, to which we ought to come upon this whole matter.

By the 5th article of the treaty of New York, of the 7th of August, 1790, the United States solemnly guarantied to the Creek nation all their lands beyond the boundary then established. The treaty of Holston, of the 2d of July, 1791, with the Cherokee nation, was also entered into under the administration of general Washington, for the purpose of quieting forever the collisions which had taken place between that nation and the adjoining States. After fixing a new and definite boundary between their lands and these States, and obtaining from the nation its express acknowledgment that they were under the protection of the United States, and of *no other sovereign whatever;* that they should hold no treaty with any foreign power, *individual State*, or with individuals; and stipulating for the restoration of prisoners, the treaty contains the following article:

"ART. 7. The United States solemnly guaranty to the *Cherokee Nation* all their lands not hereby ceded."

By the compact with Georgia of the 24th of April, 1802, on the surrender of her claims to the country west of her present limits, the United States stipulated to extinguish, at their own expense, *for the use* of Georgia, the Indian title to their lands within that State, as early as it could be "*peaceably obtained*, on *reasonable terms*." This article of the compact also recited

that, for acquiring a part of these lands, the President (Mr. Jefferson) had directed that a treaty should be immediately held with the Creeks. There seemed to be no doubt, therefore, originally, between the parties to this compact, as to the manner in which it was to be executed on the part of the general government. This treaty was accordingly holden on the 16th of June, 1802, and the *Kings*, *Chiefs*, *Head-men*, and *Warriors* of the *Creek nation*, assembled *in Council*, ceded to *the United States* an extensive tract of country. The *Commissioners Plenipotentiary* who held this treaty were nominated to the Senate and their appointments confirmed. By another treaty with the Creeks, (Nov. 14th, 1805,) they ceded other lands to the United States, which also passed to Georgia. Other treaties have followed with this nation, not essential to be now considered, until the administrations of Mr. Monroe and Mr. Adams, when they persisted in refusing to sell any more of their lands. Georgia had, in the mean time, strenuously required of the general government the fulfilment of its pledge under the compact of 1802. But all the efforts of the government to induce the Creek nation to part with their lands had failed, until the execution of the articles at the Indian Springs, in 1825, by M'Intosh and some other chiefs, who assumed to represent the Creek nation on that occasion. We all know the melancholy catastrophe, which immediately followed, and which all of us must wish could be forever forgotten. The calamities which befell the Creeks filled them with terror. They were in some degree quieted, after great difficulty, and very painful measures on the part of the general government towards Georgia, and found at last that their only hope of peace and future security was in listening to the benevolent counsels of the administration. They finally surrendered the remnant of their lands to Georgia. The last administration was then required by Georgia, in a tone at least decisive of her intention to persevere in her own views of the obligation of the compact of 1802, to extinguish the Cherokee title to the lands held by them within that State, and which were covered by the treaty of Holston. The administration repeated its efforts in good faith to induce the Cherokees to treat. But they resisted all the temptations held out to them, refused to enter into any negotiation, and claimed, on their own part, the protection of the plighted faith of the government. It was time for the administration to pause at least, and examine well the ground on which the government stood. The scenes of 1825 were still fresh in the recollection of all. The blood of M'Intosh and his fellow chief was yet scarcely dry upon the earth, and the smoke of their habitations had scarcely ceased to curl above the tops of the forest. But the government continued its efforts in the true spirit of its obligations to Georgia, until it became evident that it was in vain to hope or look for success. The Cherokees remained inflexible, and the perseverance of Georgia placed the administration in a situation, in which it was more probable that they might soon be called on to preserve the faith of the country plighted

to the Cherokees in the solemn pledge given to that nation, under the administration of general Washington, for the integrity of their country.

In this condition of things, Georgia put forth her *ultimatum*, and passed her resolutions of the 27th December, 1827. In these she declared her right to extend her authority over the whole Indian country; to coerce obedience to it; and openly asserted that she could rightfully take possession of the Cherokee lands at her own will and pleasure. During the last year, she has followed up these claims, and annexed their country to the adjacent counties; she has extended her laws over the Cherokees, and coupled with them a peculiar code, framed for that purpose, and applicable to the Indians only. Of the operation and character of these laws, I shall say something before I sit down.

There has been some complaint, on the part of Georgia, that, from the commencement of her collision on this subject with the former administration, she has been much misunderstood, and often greatly misrepresented. It is fair and candid, therefore, that, on this occasion and in this House, the principles on which she has relied to support her measures should be stated by herself; that she should be heard in her own words; and that, if she fails to be convinced, the doctrines on which she has rested her pretensions may be no longer mistaken, or her principles misrepresented. I shall not trust myself to state them from recollection, and must ask the committee to indulge me in reading some extracts from the proceedings of her Legislature in 1827. A joint committee of that body, to whom the Governor's message relating to "the acquisition of the Georgia lands, at present in the occupancy of the Cherokee Indians, and the absolute and jurisdictional right of the state to the same," had been referred, reported that they had given that subject the most mature and deliberate consideration, and accompanied the report with an elaborate exposition of the principles on which they founded certain resolutions submitted with it. The whole argument is finally recapitulated, with a comprehensiveness and clearness, which relieve me from reading the whole report.

"Before Georgia," says this report, "became a party to the articles of agreement and cession, (of 1802,) she could rightfully have possessed herself of those lands, either by negotiation with the Indians or by *force;* and she had determined to do so; but by this contract she made it the duty of the United States to sustain the expense of obtaining for her the possession, provided it could be done upon reasonable terms, and by negotiation. But in case it should become necessary to resort to *force*, this contract with the United States makes no provision; the consequence is, that Georgia is left untrammelled, at full liberty to prosecute her rights in that point of view, according to her own discretion, and as though no contract had been made. Your committee, therefore, arrive at this conclusion, that, anterior to the revolutionary war, the lands in question belonged to Great Britain; that the right of sovereignty, both as to dominion and empire, was complete and perfect in her; that the possession of the Indians was permissive; that

they were mere tenants at will; and that such tenancy might have been determined at any moment, either by negotiation or force, at the pleasure of Great Britain; that, upon the termination of the revolutionary war, and by the treaty of peace, Georgia assumed all the rights and powers in relation to the lands and Indians in question, which theretofore belonged to Great Britain; that since that time she has not divested herself of any right or power in relation to the lands now in question, further than she has in relation to all the balance of her territory; and that she is now at full liberty, and has the power and right to possess herself, by any means she may choose to employ, of the lands in dispute, and to extend over them her authority and laws. Although your committee believe that the absolute title to the lands in controversy is in Georgia, and that she may rightfully possess herself of them, when and by what means she pleases, yet they would not recommend an exercise of that right till all other means fail. We are aware that the Cherokee Indians talk extravagantly of their devotion to the land of their fathers, and of their attachment to their homes; and that they have gone very far towards convincing the general government, that negotiation with them, with the view of procuring their relinquishment of title to the Georgia lands, will be hopeless; yet we do confidently believe that they have been induced to assume this lofty bearing, by the protection and encouragement which have been afforded them by the United States, and that they will speak a totally different language, *if the general government will change its po'icy towards them, and apprize them of the nature and extent* of the *Georgia tit'e to their lands*, and what will be the *probab'e consequence* of their remaining *refractory*.

"Your committee would recommend that one other, and the *last appeal*, be made to the general government, with a view to open a negotiation with the Cherokee Indians upon the subject; that the United States do instruct their commissioners to submit this report to the said Indians; that if no such negotiation is opened, or if it is, and proves to be unsuccessful, that then the next Legislature is recommended to take into consideration the propriety of using the most effectual measures for *taking possession of* and *extending our authority and laws* over the whole of the lands in controversy. Your committee, in the true spirit of liberality, and for the purpose alone of avoiding any difficulty or misunderstanding, with either the general government or the Cherokee Indians, would recommend to the people of Georgia, to accept any treaty that may be made between the United States and those Indians, securing to this State so much of the lands in question as may remain, after making reserves for a term of years, for life, or forever, in fee simple, to the use of particular Indians, not to exceed, in the aggregate, one sixth part of the whole territory. But, if all this will not do; if the United States will not redeem her pledged honor; and if the Indians continue to turn a deaf ear to the voice of reason and friendship; we now solemnly warn them of the consequences. The lands in question *belong* to Georgia —she *must* and she *will* have them. Influenced by the foregoing considerations, your committee beg leave to offer the following resolutions:

"*Resolved*, That the United States, in failing to procure *the lands in controversy* as early as the same could be done upon peaceable and reasonable terms, have palpably violated their contract with Georgia, and *are now bound*, at all hazards, and *without regard to terms*, to procure said lands for the use of Georgia.

"*Resolved*, That the policy which has been pursued by the United States towards the Cherokee Indians, has not been in good faith to-

wards Georgia; and as all the difficulties which now exist to an extinguishment of the Indian title, have resulted from the acts of policy of the United States, it would be unjust and dishonorable in them to take shelter behind these difficulties.

"*Resolved*, That all the lands, appropriated and unappropriated, within the conventional limits of Georgia belong to her *absolutely;* that the title is in her; that the Indians are tenants *at her will;* that she may, *at any time she pleases*, determine that tenancy, by *taking possession* of the premises; and that Georgia has the right to extend her authority and laws over the whole territory, and to coerce obedience to them from all descriptions of people, be they white, red or black, within her limits."

This report and these resolutions were agreed to by both branches of the Legislature, approved by the Governor, transmitted to the President under the late administration, and are among the papers of this House. They were sent here by the President in 1828, in answer to a resolution offered by a gentleman from Georgia, (Mr. Wilde.)

I have not been able to ascertain whether or not the late administration complied with the suggestion contained in this report, that these proceedings of the state of Georgia should be laid before the Cherokee nation; but the papers on your table will enable us to judge how far the present administration has, in furtherance of the policy and views of Georgia, changed the former policy of the government, and apprized the Cherokees of the nature and extent of the Georgia title to their lands, and what the probable consequences would be of their "*remaining refractory.*"

Against all these pretensions of Georgia the Cherokee nation have protested to the present administration as well as to the last. They have asserted the inviolability of their treaties, and invoked the faith and demanded the protection of the government. They have received the answer of the present Secretary of the department of War and the President. They have finally appealed to this House, and offered their memorials here as their last refuge from the calamities, which they believe await them after we shall have turned them away. Speaking of their case, the President says in his message, "A portion, however, of the southern tribes, having mingled much with the whites, and *made some progress in the arts of civilized life*, have lately attempted to erect an independent government within the limits of Georgia and Alabama. These States, claiming to be the *only* sovereigns within their territories, extended their laws over the Indians, which induced the latter to call on the United States for protection. Under these circumstances, the question presented was, whether the general government had a right to sustain these people in their *pretensions.*"

It is to be deeply regretted, that, before the President assumed the power to decide against the Cherokee nation the interesting questions, which were thus presented under the Constitution, laws and public treaties of the country, he had not submitted the whole matter to Congress as his constitutional advisers, or, at least, to the Senate, with the view of disposing of these difficulties by amicable negotiation. It seems that it was expected, at one time, that this

would have been done. The superintendent of Indian affairs in the war department, in a letter of the 11th of April, 1829, to the Cherokee delegation, says: "The Secretary of war is not now prepared to decide the question involved in the act of the Legislature of Georgia, to which you refer, in which provision is made for extending the laws of Georgia over your people after the first of June, 1830. It is a question which will *doubtless be the subject of Congressional inquiry*, and what is proper in regard to it will no doubt be ordered by that body." I regret that this disposition of the subject had not been made. These questions might doubtless have been safely trusted to Congress. But if this was ever the intention of the government, it appears to have been soon abandoned. On the 18th of April, and within a week after colonel McKenney's letter, the Secretary of the department of war informed the Cherokee delegation, that, since that communication to them, he had conversed freely and fully with the President, and had been directed by him to submit to them his views on the whole subject. He then explicitly tells them that their claims to the protection of the government, under these treaties and the laws of the United States, against the operation of the laws of Georgia, could not be recognised. "I shall not now call the attention of the committee to the doctrines assumed by this department, further than to read one or two extracts from this letter to the Cherokee delegation.

"To all this, "says the Secretary," there is a plain and obvious answer, deducible from the known history of the country. During the war of the revolution, your nation was the friend and ally of Great Britain; a power which then claimed sovereignty within the limits of what constituted the thirteen United States. By the declaration of independence, and subsequently the treaty of 1783, all the rights of sovereignty pertaining to Great Britain became vested respectively in the original States of this Union, including North Carolina and Georgia, within whose territorial limits, as defined and known, your nation was then situated. If, as *is* the case, you have been *permitted* to *abide* on your *lands* from that period to the present, enjoying the right of soil and privilege to hunt, it is not thence to be inferred that this was any thing more than a *permission*, growing out of compacts with your nation; nor is it a circumstance whence now to deny to those States the exercise of their original sovereignty."

After further explaining to the Cherokees the views of the President, the Secretary continues: "But suppose, and it is suggested *merely* for the purpose of *awakening* your *better judgment*, that Georgia cannot and ought not to claim the exercise of such a power, what alternative is presented?" He then explicitly says that, if any collision should arise, even on this *admission that Georgia was thus in the wrong*, the claims set up by them under their treaties for protection cannot, even then, be recognised; and, as to the interference of the Executive under the laws of the Union or these treaties, he adds,

"The President cannot and will not *beguile* you with such an expectation;" and finally tells them, "No remedy can be perceived, except that which frequently heretofore has been submitted for your

consideration—*a removal beyond the Mississippi*, where *alone* can be assured to you protection and peace. It must be obvious to you, and the President has instructed me again to bring it to your candid and serious consideration, that to continue where you are, within the territorial limits of an independent State, can promise you *nothing but interruption and disquietude.*"

About the same time, I find that, in a talk delivered by the President to the Creek nation, through their agent, he told them that where they now reside, their "*white brothers*" always claimed the land, and these lands in Alabama happen to be the lands of the United States. He further informed them that his *white children* in Alabama had extended their laws over their country, and that, if they remained there, they must submit to these laws. I believe, Sir, that this bill owes its origin to this state of things, and that its chief policy is to co-operate with these States in the acquisition of the benefits which they expect to attain to themselves by the removal of the Indians.

By the course adopted by the Executive, and the principles on which he has thus assumed to act on his own responsibility, without consulting Congress, these Indian nations have been substantially placed without the protection of the United States. The treaties of this government, made with them from its first organization, and under every administration, to which they have solemnly appealed for their security against these fatal encroachments on their rights, have been treated as subordinate to the laws of these States, and are thus virtually abrogated by the executive department. The President has assumed the power to dispose of the whole question; and the message proposes to us little more than to register this executive decree. This has seriously embarrassed the whole subject. It is to be feared that insuperable obstacles have been thus interposed to the fair and unbiased action of the house, and the full and free expression of its opinion. We are called upon and constrained to act under a moral coercion extremely unfavorable to an impartial examination of the questions before us. I well know the strength of the moral influence of any opinion of the executive department of this government, and I feel the weight of it on this occasion. But I hope that this House feels too deeply its own responsibility to the country, to suffer this influence to be felt here against the solemn convictions of its judgment. These questions must now be examined here. We must adopt the measure before us, and in that way sanction all that has been done, and all which shall follow; or reject it, and leave the responsibility to those who have assumed it.

It is the more to be lamented that this decision of the Executive was made so hastily, since there was no necessity of acting definitively upon it before Congress would have convened. The laws of Georgia were not to have gone into operation immediately. If the first determination, which seems to have been taken, had not been unfortunately abandoned, and the States concerned had been frankly advised that this subject was to be referred to Congress, we should have been left free to devise

some prudent and just course, by negotiation or legislation, which might have quieted all parties, and preserved the public faith unblemished. It is unfortunately now too late to expect that any such course could be proposed with the slightest hope of success. There is no reason to believe that the executive department is desirous to retrace its steps, and it is decisively avowed that these States have unalterably determined to proceed to the extremity of a strict execution of these laws in the face of the guaranties of our treaties. We must meet the case, then, here as we find it. The message has invited us to examine it freely; and, if I am not greatly mistaken, the decision of this House upon the measure now before it, will involve momentous consequences, for good or evil, to the reputation of the country. While we have been sitting in these seats, deliberating on this matter, or rather sleeping over it, the intercourse laws have become a dead letter in the Statute-book. While the Cherokee delegation have been at our door, anxiously waiting to know the fate of their nation, bands of profligate men have intruded themselves upon their people, and seated themselves down upon their lands. I know that this is not done under the authority of Georgia, or by the countenance of the authorities of that State; but our agent has informed us that these intruders have taken courage in their aggressions from the laxity of opinion prevailing in regard to Indian rights. A state of violence, disreputable to the country, exists there. Blood has already been shed. One of the Cherokees has been slain in open day. The forces of the government have very lately been sent there to preserve the public peace; and there are now some thousands of lawless adventurers prowling through their country, digging for Cherokee gold, and quarrelling among themselves for the division of the spoil. I am not at all surprised that outrages of this sort have been renewed there. They were to have been expected, and are nothing more than the obvious consequences, which must have certainly followed the least relaxation of the former policy of the government. The protection, which these unfortunate people have demanded of us, has failed to secure them against these evils.

By surrendering the question of sovereignty, the Executive has, for all substantial purposes, virtually surrendered the treaties too. The intercourse laws of the United States are nullified with them. For until this was done, the right of these States to extend their laws over the Cherokee nation and their country, was not sustainable. It has become necessary, therefore, for those who justify what has been done, to go one step further, and deny the validity of the intercourse laws, and the treaties too. That ground has accordingly been taken, and gravely attempted to be sustained. If it be well founded in any principles of our political system, there is indeed no redress for those who have trusted to us. We shall have ensnared them in our toils. We have allured them on to their destruction. These unsuspecting victims of their generous confidence in our faith, must be left to bear the calamities which threaten them as they can,

or perish under them. They have grievously complained of us, and the country has deeply felt the reproaches of our good faith, which these complaints could not have failed to inspire in an enlightened and Christian community. The obligations of our treaties have never been so understood or acted upon before. The events which have followed have shocked the public feeling and agitated the country. It requires no skill in political science to interpret these treaties. The plainest man can read your solemn guaranties to these nations, and understand them, for himself. I can tell the gentleman from Tennessee (Mr. Bell) that he is greatly mistaken in supposing that the excitement which prevails is nothing more than puling sensibility, or that it is to be attributed to religious fanatics or aspiring politicians. The memorials on your tables will show you the names of the warmest friends of this administration. Able civilians and sound statesmen believe you to be in the wrong. Pious men of all denominations have been afflicted by what has passed, and the consciences of the purest patriots in the country have been wounded.

In my humble opinion, Sir, Georgia has had no reason to complain of us, or to accuse the general government of a disinclination to promote her interests, as far as it could have been done in the true spirit of our engagements to her, and without violating our good faith to the Cherokees. To say nothing now of her original title to the country west of her present limits, (for we assumed that to be in her by the compact of 1802,) we made her what was then considered and accepted as a fair compensation for its surrender. We have since burthened the treasury with a heavy charge from the proceeds of what we acquired, for the extinguishment of private claims under titles derived from her legislature. The amount paid to these claimants, and to Georgia, was seven millions and a quarter of dollars. In the execution of this compact, I am informed that we have since extinguished the Indian title within her limits to more than twelve millions of acres, and at an enormous expense. I am ready now to vote any further amount that may be necessary to carry it into effect honorably, in the spirit in which it has always been executed. This is to be done by treaty. The very delay which has taken place in its complete execution, from the second year of Mr. Jefferson's administration to this time, (independently of its obvious meaning on the face of it,) conclusively shows the sense in which it has been understood and acted upon under all administrations. There can be no administration, nor any one here, who does not feel and acknowledge our obligation to execute it faithfully.

In the message of the Executive, informing us what has been done, he has given us his reasons, too, for the course which has been taken on his part. While the President has very justly said that it would be as cruel as unjust to compel the Indian nations to abandon their country, and seek a new home in a distant land, he has explicitly stated, too, "that they should be *distinctly informed*, that, if they remain within the limits of the

States, they must be subject to their laws"—and that, "in return for their obedience *as individuals*, they will, without doubt, be protected in the enjoyment of those possessions *which they have improved by their industry*. But," he adds, "it seems to me *visionary* to suppose that, in this state of things, *claims* can be *allowed* on tracts of country on which they have *neither dwelt or made improvements*, merely because they have seen them from the mountain or passed them in the chase." These are the doctrines of the Executive in the words of the message. They are little short of a copy of their original, and I might almost as well have read them from the report and resolutions of Georgia. These are doctrines, too, which the United States set up in the face of the treaty of Holston! The guaranty of that treaty, Sir, was to the Cherokee nation, and to the lands of the nation, and not to individuals Now, what, on the other hand, is the palpable operation—indeed, I may say, the express enactments, of the laws of Georgia—but to annihilate completely the political capacity, and abolish the government of the Cherokees, and reduce them all to individuals? There is to be no longer any nation there. In the language of the message, they are to receive protection hereafter "*like other citizens*"—of Georgia, I presume—and not from the United States. The other party to our treaty no longer exists. The bill before you follows out these principles, and authorizes the President to purchase the improvements on the lands of the Cherokee nation from the individuals who happen to cultivate them for the time being, under their own regulations among themselves, and expressly prohibits any Cherokee from re-occupying them afterwards. These lands then pass to Georgia under our compact. The Executive has expressly yielded to Georgia the power to accomplish this object by the extinction of the national capacity of the Cherokees under her laws. It is an idle waste of words to enter upon any formal reasoning to show that he has thus assumed the power to abrogate the treaty itself. If he has the power under the Constitution to do what he has done, it is mere mockery, and an insult to the Cherokees and to common sense; to talk about the treaty of Holston as a thing which has any existence. I do not know whom he may have consulted, or who has recommended to him the course which he has seen fit to adopt with this treaty; but I trust, at least, that this illustration of our notions of public faith has received no countenance from that member of his cabinet, whom we have been accustomed to consider as standing in the nearest relation to his person, and whose duties have made him the confidential adviser of the President in negotiations with other powers.

At the threshold of this inquiry, we shall find ourselves met with a very grave question, intimately connected with the treaty-making power, which I hope those who intend to sustain what has been done, will be able to answer to the satisfaction of the House. I am the more anxious to know their views of it, as we have heard some specious appeals to the friends of State rights, to come forward on this occasion, and sustain their principles. The alarm has been sounded; and they have rushed to the stan-

dard with an alacrity which leaves us no reason to doubt that they have really believed their favorite doctrines to be in jeopardy. I fear that these appeals have had some influence upon the question before us.

If there was any point, on which, more than any other, the opposition to the adoption of the Constitution originally turned, and the influence of which has been felt by one of the great parties which divided the country, it was the apprehension that the new government was either too monarchical in principle, or would turn out to be so in practice. This alarm, too, was chiefly founded on the opinion that the Constitution had provided no adequate security to the States, by imposing definite and effectual limitations on the executive power and executive discretion. It has been a fruitful source of crimination, whether just or unjust, upon one of the parties, and especially upon general Hamilton and his friends, that the tendency of their principles, and of the measures which they advised, was to invest the President with powers which must prove fatal to the wholesome influence of the House of Representatives and destroy the control of the States in the Senate. Under these banners, battles have been fought and won; and laurels have either been, or thought to have been, gathered. They have certainly been claimed as the rewards of victory, and are even yet worn here as the hereditary honors of the field.

The question before us does not involve the right of the President, in the recess of Congress, to decide, in the first instance, for the regulation of his conduct until they can be convened, the mere construction of the terms of a treaty—nor to determine the effect of an infraction of any of its engagements by the other party. There is nothing ambiguous or of doubtful interpretation on the face of the Cherokee and Creek treaties, and no pretence has been set up that they have been disregarded by the executive because these nations have not observed them on their part, and kept their faith with us honestly. They were well understood, originally, on all sides, and are framed in language that cannot be perverted. There can be no quibbling as to the real intention of both parties. The terms are not susceptible of different significations, and the expressions used are definite and suitable to the subject matter of them. It is enough, however, that the Executive has not assumed to act on this ground, and the complaints of bad faith are unfortunately all on the other side. Nor are we examining whether the *casus fœderis* has occurred under any treaty with a third party, by which any engagements on our part, not operative before, have come into force. He claims the broad power that it is for the Executive to determine the abrogation of our stipulations, because Georgia has enacted certain laws for more effectually exercising the jurisdiction which she claims over the Cherokee nation and their lands. He maintains the right, in that department of the government, to treat the obligations, by which the United States are bound on the face of the treaties, as annulled from that time—that they shall be reduced to mean nothing any longer—in a word, that, from that time, they have no existence as treaties with the Cherokee or Creek nations. This

is the doctrine which must be sustained, and it is this stretch of executive power which must be vindicated by those who support the measures of the President. The doctrine will reach our treaties with other powers, too, as well as those now before us; for we are examining the right of the Executive to determine such a question at all, in any case, and not whether he has decided it correctly in this.

But, Sir, the power asserted will be found to be much higher than the Executive claims it to be. The assumption on which it ostensibly rests in the message is, that, by the happening of the contingency, that Georgia has "*extended*" her laws over the Cherokees, the treaty has now come into collision with the jurisdiction of the State, and must therefore be yielded. But the principle which lurks under this disguise really goes to the total annihilation of the treaties from the beginning, and assumes that they were never binding on the United States at all. If they ever were so, no act of one of the States could discharge our obligations. The jurisdiction of Georgia must have been as perfect when these treaties were first made as it was in 1827, and the general laws of the State must have always applied to the Cherokee country. If the treaties are invalid now, they were always so. The right of Georgia to the improvements of the Cherokees, too, is as perfect as it is to their vacant lands. There is no hiding-place half-way. There is no middle ground on which the Executive can stand. I doubt if there was ever meant to be any, for less than the whole would not reach the object to be attained. The principle set up cannot be arrested at any point short of the total prostration of the treaties, and the unqualified power in the Executive to mould and fashion them, and to annihilate these or any other treaties at his own will and pleasure. He asks no advice from any other department, and consults no co-ordinate branch of the government. He acknowledges no obligation to submit such a question to Congress, or even to the Senate. His march is onward to the direct accomplishment of the executive will, as if the whole action of the government on this subject was the exclusive attribute of executive power. It is this, Sir, which has led to all our embarrassments, and brought about the present disorderly condition of the government in this matter. It is to support measures and doctrines like these that appeals have been made, on this occasion, to the friends of State rights. I think that if they examine their principles carefully, we have reason to believe that they will be found on the other side of the question.

It is well known that the disposition of the treaty-making power was one of the most difficult points to be settled in the Convention of 1787. In Europe, it was in the hands of the sovereign, and was liable to the greatest abuse. It had been used there for personal objects, and perverted to the most mischievous designs of ambition. The whole policy of many of the European governments had been seriously involved in the exercise of this power, and it had led to measures the most fatal to their prosperity and peace. Indeed, Sir, many of the calamities which they suffered for a century may be traced to the abuse of this power in

the hands of the crown. It was in the view of this evil, that, under our Constitution, it was considered unsafe to trust it to the Executive. In Europe it was prerogative; but here it was to be limited by the Constitution, and subjected to the control of the States in the Senate, where their sovereignty was equal. It was a political power, which so seriously affected the general policy of the country in its relations with other nations, as well as in its operation on the prosperity of the States at home, that it was even considered unsafe to intrust it to a majority of the States, and the concurrence of two thirds of the Senators was therefore required. For this purpose, the Senate is the council of the States, and the treaties are the acts of the States. The Executive is little more, in that respect, than the agent or organ of the States, in matters of negotiation. He may refuse to act at all, and shut the door of negotiation, or decline to submit his preliminary arrangements to the Senate. This was deemed to be quite as much power as could be safely trusted to his discretion. His will or his opinion, however, was nothing without their sanction. The treaties, therefore, express the will of the States, and not the capricious inclinations or the pleasure of the executive department. They would have been the supreme law of the land under the law of nations, without any express provision in the Constitution; but that sanction has been superadded, that there should be no question of their supremacy. As they constitute the public law of the country, the treaty-making power was withheld from the Executive, because, under our Constitution, this was to be a government of law, and not of prerogative, and especially not of Executive prerogative; for if his will was to have the force of law, that was, to a certain degree, despotism. When the Executive and the States have entered into a treaty, the Constitution has attached its sanction to it, and given it all its efficacy. Its validity rests upon that, and its force and operation are sustained by that. When once fixed and adopted as the law of the land, the Executive has no dispensing power. His own duty is plainly prescribed in the Constitution. The control of the States over his will has been constitutionally interposed to very little purpose, if treaties are to take effect or not, or be suspended in their operation afterwards, at his pleasure, without any violation of them by the other party. They are clothed with a sanctity which entitles them to higher respect than our mere municipal regulations. There are two parties to them, and the public faith secures their inviolability. And yet it has been gravely asserted, and attempted to be maintained, that, after the States have entered into treaties, the Executive may revise their solemn acts—that he may judge over the States and above the States—that he may entertain an appeal from them to himself or his cabinet—that he may virtually abrogate their treaties by an order in council, and give the force of law to an executive proclamation.

The treaties and the law of nations constitute the public law of the Union. They deeply concern private right, as well as the political relations of the country. If a question should arise between one of your citizens and the government or a

foreign power, would the judiciary regard an interposition of the executive, which professed to exercise the right of impugning the integrity of your treaties? The power, Sir, to adjust and settle the conventional law of all countries, must exist somewhere in all governments. It is vested here in the States themselves, and when they have established it, the political rights of others become irrevocable. You are denied the power of unsettling it, or revoking your obligations at your own pleasure. Above all things, we have never trusted the Executive with that dangerous prerogative. The Senate was vested with the power to determine the conventional law of the Union, because they are the peculiar guardians and conservators, as well as the representatives of the States, in the exercise of that function of their sovereignty. In such matters as, in the exercise of this high political attribute, might affect their citizens or their own jurisdictions, it could be safely trusted no where else. The individual States were denied this power, because that might defeat the conventional law of the whole. There is nothing new, or suggested now for the first time, in that operation of treaties, which, to some extent, affects and controls their domestic jurisdiction, and impairs, in some degree, what gentlemen have so tenaciously held to, as the reserved rights of the States. Every treaty of limits must have that operation. The treaty of 1783 abrogated all the State laws which impeded the recovery of British debts, and prohibited the States from passing any in future. Yet the old Congress had no jurisdiction over that matter, except as a result of the treaty-making power. In the letter of Mr. Jefferson to Mr. Hammond, of the 29th of May, 1792, he says that it was always perfectly understood that the treaties controlled the laws of the States—the Confederation having made them obligatory on the whole; that Congress had so declared and demonstrated them; that the legislatures and executives of most of the States had admitted it; and that the judiciaries, both of the separate and general governments, had so decided. He stated further, that the formal repeal of the laws of the States was all supererogation, and showed that Georgia herself had so considered it, and her courts had so adjudged. It was every where considered that these laws of the States were annulled by the treaty. It would be quite easy to refer to numerous instances of the same sort, in various treaties since the adoption of the present Constitution. As it was foreseen that such must of necessity be their effect by the law of nations, that feature of the old Confederation, which retains this power in the hands of the States by the federative representation of these sovereignties in the Senate, is continued under the present Constitution. It was confided to, or rather reserved to the States there, as a political Confederation of sovereignties, that they might determine for themselves how far, and to what objects, the conventional law of the Union should be extended. It is not, in any sense, the dismemberment of the sovereignty of the States. That suggestion is a mere abuse of words. It may as well be said

that the sovereignty of a particular State is dismembered by the constitutional operation of the laws of Congress for regulating the commerce of the country. The thing of which gentlemen speak is the totality of sovereignty, which exists no where under our institutions. I consider that the States have, in the strictest sense, retained to themselves in the Senate, their own control of their reserved rights in the exercise of the treaty-making power. It is safely placed there under their own conservation, and they are bound, in good faith to the Union, to respect the treaties which are there entered into. They are represented and act there as in their original capacity. They could not act with convenience or usefulness in any other way. Their rights are safe in their own council. What is constitutionally settled there, becomes their public law, and they are bound to observe it. It is not perhaps strictly a legislative power, though Mr. Madison has treated it, in a publication to which I shall presently refer, as partaking much of that character. The Constitution declares that "all legislative powers" therein granted shall be vested in Congress. It is not, however, essential to the views which I take of the question, to consider that point.

The course of the Executive has overturned these constitutional securities of the States, and swept away their power. His doctrines fall nothing short of an assumption of the power of Congress to abrogate the public treaties in a case of high and uncontrollable necessity, by exercising the power of declaring war. If the friends of State rights propose to sanction the violation of these Indian treaties, they must bear him out to the full extent of this thoughtless usurpation. This question is not altogether new, though no stretch of executive prerogative like this has ever before occurred or been claimed under any administration. I presume that gentlemen are familiar with the history of the Proclamation of Neutrality, issued by general Washington in 1793. This declaration by the President of the disposition of the government to remain at peace, and warning our citizens to abstain from any acts that might involve them or the government in the war, was looked upon with jealousy. It was a topic of much remark, and was closely scrutinized. Yet it violated no treaty. It assumed to suspend none of our obligations, and settled no question arising upon them. General Washington neither claimed nor exercised such a power. The Proclamation was precisely what it professed to be, and no more. The administration assumed a posture of neutrality, and the Proclamation declared the intention of the President not to change the relations of the government, until Congress should convene and settle that question. In the mean time, our citizens were forewarned, that if they mingled with the parties to the war, and took part with either side, the government would not extend its power for their protection. It was unanimously sanctioned in the cabinet. Mr. Jefferson approved it, and has informed us that he "admitted that the President, having received the nation at the close of

Congress, in a state of peace, was bound to preserve it in that state, till Congress should meet again; and might proclaim any thing which went no further." Whether the Proclamation was to be treated as implying a pledge of future neutrality, was another matter, and a speculative question. But general Washington and his administration were uncommitted to any such construction of it. It was an abstract question, and the President, at the opening of the next session of Congress, laid the whole subject before them for their constitutional action upon it. General Hamilton fully declared, that no opinion of the President, on the point of neutrality, or the French guaranty, could in the least affect the question; and the Message simply announced the issuing of the Proclamation and its real object. Mr. Madison has furnished us with his opinions on the nature of the treaty-making power, in the letters of Helvidius. The friends of State rights may clearly see, in that commentary, in what direction the government is advancing, if the measures of the Executive, since the adjournment of the last Congress, are sanctioned by this House. The power he has exercised involves the assumption of the most transcendental sovereignty of the States, and prostrates every other department of the government. The Executive may in other ways bring you into collision with foreign nations, on his responsibility to those who may constitutionally call him to answer; but in the case before us, I consider that he has acted by open usurpation. It should be quite enough that he may, in the exercise of his confessed powers, force you into war against your own will, without yielding to him the power to enthrone himself above the Constitution. If, on any question which involves the construction of a treaty—much more its validity—he may assume the powers of the Senate, the Judiciary and Congress, there is no longer any power in the government, which can be said to have been limited by the Constitution at all. It is a bold step indeed of executive prerogative, and I have been surprised to find that gentlemen in this house sit down so quietly under it. I was anxious, in the early part of the session, to know how it might be received by the Senate; but my doubts were entirely removed when this bill appeared at your door. They have capitulated. They are completely disarmed, and have been marched out of their entrenchments without the honors of war. The duty of the Executive in this matter was exceedingly plain. If he doubted as to the validity or operation of these treaties, the examples of his predecessors were before him. He should have at least paused before he moved so rashly—have kept all things in the condition in which they stood, and submitted the whole case to Congress. The first suggestion made to the Cherokee delegation was right; and it is to be lamented that it was ever revoked or withdrawn. What is to be our security for our European treaties? If the Executive doubts as to the construction or validity of those, too, shall he cut the knot for himself, and dissolve their obligations? Our commercial treaties have no greater sanctity than any

others. Is your foreign trade and intercourse with other nations to be at his mercy too? I am not aware that the laws of Congress have any greater sanctions than your treaties. You have many treaties with other nations for the advantage of your citizens. Shall the Executive so deal with these, too, as to prostrate your navigation, or subject it to retaliation? He may annul the stipulations of treaties made to favor your own trade; for if he can overleap the law of nations and the Constitution, by revoking those which favor others, you have no better security than his will for yourselves. He can release them from their stipulations in your favor, as well as those which operate against them. If he should think that all his predecessors and former Senates have been wrong-headed on other points, and that they have been too liberal to particular interests, or have favored commerce, or navigation or manufactures too much, it is only for the Executive to put forth his prerogative, and your constitutional securities are in his hand.

I am ready to admit that a case of high and uncontrollable necessity may occur, so deeply involving the fate of the country, or so seriously affecting its safety, that the President, submitting himself to a high responsibility, may feel it to be his duty to decline the execution of a treaty until Congress can be convened. But his duty in such a case is very clear. He may suspend acting upon it altogether, but he has no power to determine such a question finally for himself. He must submit it to Congress. If a treaty is to be declared void, it is for Congress only to annul it.* The President and Senate cannot do it unless by negotiation. But, Sir, these are extreme cases, and that before us is not one of them. The President has not acted, or professed to act, with any such views. He has given to the other party his own final determination of the question, and has acted upon it throughout. He declined to suspend the matter at all till the case could be sent here, and directed the Secretary of the war department to inform the Cherokee delegation that the course of the government was changed, and to communicate to them his final decision. He asks us now for no opinion upon it; but, considering it settled, we are called upon to appropriate some millions to relieve the other party from the condition to which his decision has reduced them. I know that there is apathy here under these assumptions of the Executive; but we are bound to resist these encroachments on the powers of Congress at the beginning. This is not a distant alarm. The invader is within this hall. His manifesto is on your table; and, at the next step, we, too, shall have surrendered at discretion. I have often thought that, after all, those who usurp authority were not so much to blame as we commonly consider them to be, when we find others so ready to yield up the powers of government into their hands. Rome preserved her liberties until her public councils prepared the

* This would amount, in most cases, to a declaration of war; and Congress could do it only under the power of declaring war. *Ed.*

way for one family to establish itself on their ruins; and the Tudors and Stuarts did not rule in England by proclamation, until servile parliaments looked upon the advances of prerogative at least with indifference. If these encroachments of the executive department are not met and repelled in these halls, they will be resisted no where. The only power which stands between the Executive and the States is Congress. The States may destroy the Union themselves by open force, but the concentration of power in the hands of the Executive leads to despotism, which is worse. Of the two evils, I should prefer the nullifying power in the States. It is less dangerous, and admits of surer remedy. A single State may occasionally sit unquietly under the measures of government, but the good sense of the people will set all things right in the end. But the executive department never yields up power. The whole Union will sooner or later feel the shock, if this control of our treaties shall be surrendered. The mischief will reach every where, and is irreparable. The judiciary may partially protect individual right, but there are two parties to the treaties, and one of them will not always be under your control. We have already reached a point in legislation, at this session, where we should pause, and seriously consider in what path we are advancing. There are several bills now on your table, formally prepared in the committee rooms of this House, and reported here, which confer powers of an extraordinary character on the Executive. When you shall have passed the bill now under consideration, which places your territory west of the Mississippi at his sole disposal, the two bills relating to the army and navy, the reciprocity act reported a few days ago by one of my colleagues, and yielded up the power claimed over your treaties, this government will scarcely be a masked monarchy. The Constitution will have become blank paper, and the first dictator may come to your table and write his decrees upon it at his pleasure. It may not become me to address an admonition to this House, and it would profit nothing from me or any man, if history has already done it so often in vain. But it is at least time for us, as prudent men, to open that book at almost any page, and read the fate of all republics that have gone before us and perished; or, if we are not admonished by the past, to look around us, and see what is passing in the world in our own day. What is now the condition of South America, in whose emancipation we felt so deep an interest, and where we hoped to find the cause of free government strengthened against the alliances of its enemies? Disunion has blasted our hopes. Slavish Congresses have there betrayed their country, and the power of that whole continent is swayed by bands of reckless despots. Yet, while their liberties have been crushed, we find in Europe that, in spite of the power of kingly alliances, the parliament of one government at least, and that, too, once the most despotic of them all, is successfully limiting the power and influence of the crown. Shall we, then, strengthen the hands of the Executive here as one of the secu-

rities of the rights of the States? I know very well the answer which gentlemen are ready to offer on this occasion. We are to be told that his decision has been in favor of the States. It is this which leads us to look upon his measures with complacency; and this is the soothing opiate by which he has quieted our fears. I should like to hear the answer to another question. What will be the decision of the Executive in the next case? Will that be in favor of the States, or against them? I will tell you, Sir. They will not be suffered to ask that question. When they have conceded the power to settle such a matter for himself, the Executive will take care to exercise his new prerogative without consulting them. We may see, on this occasion, in the clearest light, the tendency of executive power in those collisions which occasionally spring up in every federative government between the members of it and the head. This department is constantly on the watch, and seldom fails to secure to itself the arbitrament of every such matter. This third party is ever lying in wait for power. Under some plausible disguise, it attracts the confidence of the parties, and not unfrequently by appeals to the pride as well as the interests of States, it secures itself in its usurpations, and leads them willingly to rivet their own chains. If the Executive had decided that all our former treaties with the Cherokees and Creeks had been void, as to the cessions of land which some of the States have received under them, should we not have witnessed a very different feeling here? Should we not have heard something—and that, too, quite earnestly—of plighted faith—of solemn treaties—and the constitutional securities of the States? By what process of infatuation, or by what operation of self-love or State pride, have we brought ourselves to yield to the Executive the power to pronounce these treaties to be worthless to the other parties? There can be no tyranny worse than that which refuses to be governed by its own rules.

I find that we have entered into more than two hundred treaties with the Indian nations since the declaration of independence. Fifteen are with the Cherokees alone, and all but one of these have been made since the adoption of the present Constitution. They have been made under every administration. Commissioners for treating have been nominated to the Senate, and regularly commissioned for this purpose. Every Senate since 1789 has ratified them; and they are proclaimed by the Executive like all other treaties. The statesmen, whose names have sanctioned them, are Washington, Adams, Jefferson, Madison, and Monroe. I see among them, too, the name of the present Chief Magistrate. It is in the face of such a case as this, that we have heard the validity of Indian treaties denied, and the history of this government for half a century treated as a deliberate system of jugglery and imposture.

If there is any foundation for the doctrines which have been put forth to justify ourselves in disregarding these treaties, we are bound to make out a case so clear that no plausible doubt can be started against us. Our path must be free, open and

unobstructed; and we must not only see that we can go there, but that we can do it with safety and honor. If there can be any doubt, it becomes us, if we regard our faith, to ask ourselves, as honest men, which party is entitled to the benefit of it in morality?—the ignorant or the enlightened?—the weak or the strong?—the defenceless or the powerful? We should take care that, on such a question, it shall not be said of us that we have thrown our sword into the scale. The Cherokee treaties and our guaranties to them have been made for compensations granted to us on the face of them. Now, what says natural justice in such a case? You have taken these compensations, and are in the enjoyment of them to this day. Can you restore to the other party what you have taken from him, and what you tempted him to yield to you? Can you give back the rights which he has surrendered? Can you place him in the situation from which you have enticed him? Is this now in your power, if you were even disposed to do it? These are questions, Sir, which will be asked, and they ought to be asked. It is better for us to ask them now. For they must be answered too—and answered honorably for you; or your country is disgraced before the world. You are handling no light or trifling matter. You are pressed on every side by circumstances, which should constrain prudent men to look well to their steps. While these treaties are lying open before you, and you are compelled to look such an array of names as these in the face, he must be a bold man, and one having a very good opinion of himself, who can step forward and efface the most honorable portion of your history, and hold up the illustrious men who founded this government as ignorant of the first principles of the Constitution. I have too much confidence in the honor and justice of this House to believe that we are prepared so soon to blemish the reputation of those names, which we have been taught to venerate from our childhood.

I have carefully examined the report of the committee on Indian affairs, to find on what ground this bill is to be supported; and, great as my personal respect is for the gentlemen who are on that committee, I am constrained to say, that I have found in that paper subtle principles thrown out, but not established—ingenious doctrines started, but not proved—and refined theories projected, which I think the history of the country will not sustain. The positions relied on to support the argument of the committee against the right of the Indian nations to soil or sovereignty are, "that possession, actual or constructive, of the entire habitable portion of this continent was taken by the nations of Europe, divided out and held originally by the right of discovery as between themselves, and by the right of discovery and conquest as against the aboriginal inhabitants;" that, "although the practice of the crown of England was not marked with an equal disregard" (as that of Spain) "of the rights of *personal liberty* in the Indians, yet their pretensions to be the owners of any portion of the *soil* were *wholly disregarded*;" that "in *all the acts*, first of the *Colonies*, and afterwards of

the *States*, the fundamental principle that the Indians had *no rights, by virtue of their ancient possession, either of soil or sovereignty*, has *never been abandoned*, either *expressly* or by *implication*," and that the recognition of these principles may be seen in the history of the federal government.

Before I proceed to a more particular examination of these positions, which have been advanced with so much confidence, I feel it to be a duty to the State which I have the honor in part to represent here, to say something of her policy towards the Indians within her limits. I have been somewhat surprised to hear, on several occasions during this session, that New York had some interest in this question, and that her policy, since the revolution, would be found to sanction the principles which have been advanced in relation to the Cherokees. I feel bound not to let this opportunity pass without setting that matter right. I deny, Sir, that there is any just ground for these assertions; and more especially I deny, that she has maintained any doctrines, which go to impeach the sanctity, or impair the obligations of any treaties made by the general government with the Indian nations in that State. By the treaties of Fort Schuyler of September 12th, 1788, September 22d, 1788, and of Albany of February 25th, 1789, the Onondagas, Oneidas and Cayugas expressly ceded and granted all their lands to that State, and the occupation of certain portions of the lands thus ceded was allowed them by the State in the same treaties. The Stockbridge and Brothertown Indians came into that State from some of the New England States. None of these tribes, therefore, hold any lands there under their native or original title. Whether they are to be treated as aliens or not, or whatever their relation to the State may be, they are subject, like all aliens as well as citizens, to the criminal jurisdiction of the State. But as these tribes, as well as others, have been placed under her protection, she has recognised her obligation to secure them against the frauds and encroachments of white men. She was bound, in the treaties I have referred to, to do this as to their lands, and she has ever respected them honorably. Accordingly, it has been made unlawful for her citizens, or any other than Indians, to settle among them; or to purchase their lands; or to prosecute against them any action upon any contract, in her courts. Surely New York may regulate the conduct of her own citizens in these matters as she pleases. But she has not stopped there. Agents and attorneys for them have been appointed, and paid, too, by the State, to advise them in controversies among themselves, or with others, to defend them in all actions brought against them, and to prosecute for them. Yet I find these laws, passed for their protection, among those gravely reported from the committee on Indian affairs under a resolution of this House, and laid upon our tables to show, I presume, that New York claims the same power over the Indian tribes and their lands that Georgia, Alabama and Mississippi have done over the Indians within their limits. Why, Sir, if these laws are carefully examined, they

would show nothing to that effect, did the Indians still hold their lands and sovereignty under their native claim and right. So careful has New York been on the point of Indian title, that, although the Mohawks were driven into Canada, at the close of the revolution, and their country was wrested from them by actual conquest, we find that, as late as the 29th of March, 1797, she purchased their title at a treaty held at Albany, under the authority of the federal government. It purports to have been made with "the Mohawk nation of Indians residing in the Province of Upper Canada, within the dominions of the king of Great Britain," in the presence of Isaac Smith, a commissioner appointed by the United States. By another treaty, held at New York, on the 31st of May, 1796, the State purchased of "the seven nations of Indians of Canada," all their claims to lands within her limits, reserving a small tract at St. Regis.

The Seneca nation still claim to hold their lands under their original title. But New York has no interest in them. The pre-emptive right was conveyed to Massachusetts many years ago, and is now held by individuals under purchases from that State. I have noticed, in the Executive Journal, that, on the 24th of February, 1827, a conveyance by treaty from the Seneca nation of part of their lands to some of these individuals, made in the presence of a commissioner of the United States, was laid before the Senate by Mr. Adams. On the 29th of February, 1828, a resolution to ratify it was negatived, the Senate being equally divided on the question. On the 26th of March, the following resolution was submitted by one of the senators from Georgia, (Mr. Berrien:)

"*Resolved*, That, by the refusal of the Senate to ratify the treaty with the Seneca Indians, it is not intended to express any disapprobation of the terms of the contract entered into by the individuals who were parties to that contract, but merely *to disclaim any power over the subject matter.*"

This resolution was modified, on the 4th of April, by omitting the latter words, and inserting so as to read, "*to disclaim the necessity of an interference by the Senate with the subject matter,*" and passed in that form. These proceedings struck me as somewhat novel; and I find that the Senate departed, in this instance, from its former practice, on the same subject, under Mr. Jefferson's administration. The treaties between the Senecas and Oliver Phelps, as well as the Holland Land Company, for perfecting the same pre-emptive right, were laid before the Senate by Mr. Jefferson, and formally ratified, like other treaties. There was but one dissenting vote, (Mr. Wright of Maryland.) Neither Mr. Jefferson nor the Senate appear to have then thought that this was an interference in any matter beyond their power. How soon afterwards it was discovered to be so, I cannot say. It may, perhaps, be inferred that this treaty was considered more in the nature of a private contract than a political treaty in the sense of the Constitution; and the conclusion to which the Senate came may admit of that

explanation. But I think that the proceedings followed too close upon the Georgia resolutions, to authorize us to consider it as a grave precedent, in its bearing on the question of State sovereignty.

The committee have referred us to an expression found in an opinion delivered in the Supreme Court of New York, by the Chief Justice, in which they came to the conclusion that the Indians were to be considered as citizens of the State, and capable of taking by descent. They have copied into their report an extract of half a dozen words, in which the Chief Justice said that he "knew of no half-way doctrine on this subject." It would be quite enough for New York to say, in answer to this case, that this opinion was afterwards reversed in the Court of Errors, with great unanimity; and this very point was then fully examined by the Chancellor. But it would have been more fair to have furnished us here with a somewhat larger extract from the opinion of the Chief Justice. The context would have shown us more clearly the views, which led the Court to the conclusion to which they came. He says that the Court "do *not mean to say* that the condition of the Indian tribes, at former and remote periods, has been that of subjects or citizens of the State. Their condition has been *gradually changing*, until they have *lost* every *attribute of sovereignty*, and become entirely dependent upon and subject to our government. I know of no half-way doctrine on this subject." Now, Sir, I think that the fair import of this is rather against the position taken by the committee. We all admit that there is no half-way doctrine on this point. Every candid man will admit, too, that a tribe of Indians, within any of the States, may so far dwindle away, or abandon their right to self-government, and so far dissolve their original institutions, that they may be considered, on the soundest principles, to have become merged in our society, and extinct, for all political purposes, as separate communities. It would be very easy to refer you to cases of that sort in New England. The Chief Justice said that the time had come when the Court, on those principles only, might so consider the Indians in New York. It was not a question involving strict principles of municipal law merely. The Court considered that such was, in fact, their condition. But the case is reversed, and the law of the State is settled, to this day, as the Court of Errors left it. The Chief Justice, however, no where denied the original native right of the Indians to sovereignty. He expressly disclaimed any such denial. He asserted no rights of conquest over them or their lands. He said nothing of disregarding Indian pretensions to their lands, or that any of the Colonies or States had ever maintained that they had no rights of sovereignty or soil. There is nothing of this, or any thing that countenances it, in the opinion of the Court. Such doctrines as these would have startled the moral sense of the State, and contradicted her whole history. And how far, Sir, after all, could the committee have pressed this opinion into their service, if it had never been

overruled? It referred only to the condition of the Indians in New York. It neither speaks nor treats of any others; nor does it profess to suggest any principles which reach the case before us here. Upon these it is silent.

It is very obvious how the Court were led to the conclusion to which they came. No one can read this opinion, and fail to see that they relied chiefly on the effect of the Act of April 12th, 1822. The history of this Act is well known to every lawyer in that state. Soonongize, a Seneca Indian, had been indicted for killing an Indian woman within the Seneca lands. She had been put to death under the authority of the Seneca chiefs and sachems. He pleaded to the jurisdiction of the State tribunal, and the question came before the Supreme Court, for their opinion, in 1821. It was fully discussed by the attorney-general, and the counsel for Soonongize, (Mr. Oakley,) and the learning, research and ability displayed in that argument, will be long remembered at the bar, and in the courts of New York. I recollect well the general impression at the bar at that time on the point. The Court held the case under advisement until the next winter. They found no principles on which they could safely affirm, in a judicial opinion, the jurisdiction of the State Court. They reported the case to the Governor, and recommended that the question should be submitted to the legislature. The Act of 1822 was passed. There was, however, no Indian land to acquire. No code of Indian crimes was enacted, nor were Indians disqualified to testify in any case. The object and spirit of it are very manifest in the recital which precedes it. It states that the Senecas had exercised the power of punishing, even capitally, individuals of their tribe; that the sole and exclusive cognizance of *crimes* belongs to the State; and that, to protect the Indians, this jurisdiction ought to be asserted to that extent. Now, Sir, what was the case before the legislature, and on what motives did they act? They saw that death was inflicted upon the Senecas, under their bloody code and summary Indian forms, with no regard to proof, or any security for the fair investigation of truth. Crimes, too, were of the most fanciful character. Sorcery and witchcraft were among them. The system was, in itself, little less than murder. There was some form or mockery of inquiry before the chiefs, but nothing like trial. The foundation of what we call punishment had no reference among them to the protection of their society, but was rather the infliction of personal retaliation or private revenge. I believe that the case of Soonongize partook somewhat of that character; but I do not recollect the circumstances well enough to say that I may not be mistaken on that point. The intention of the legislature was to rescue them from this condition—to extend to them, if it could possibly be done, some security against the inhuman proceedings of this Indian code—to afford them a fair and impartial trial—a trial by testimony—the aid of council, and the security of a jury. It was felt that the State owed it to humanity—to the unfortunate people cast upon her protection—to her

own character, and her responsibility to the opinion of mankind, to make that effort to arrest this course of violence and waste of human life. If the act can be sustained, it is undoubtedly desirable that it should be. But this is not the first occasion on which I have expressed my own opinion, that it left the whole matter exactly where it found it. It has once been my professional duty to examine that question in its bearing upon another case. The sovereignty of the Senecas is yet unimpeached, if it should be found that they were not subject to the jurisdiction of the State, when this act was passed. That question yet remains to be tried. However benevolent the intentions of the legislature may have been, yet, if it should be found that the consent of the Seneca nation to the exercise of this power was necessary, the Courts will pause before they assume jurisdiction under it. I am not aware that the Act has ever been executed. It was shortly after its passage, and in the first case which brought up the question, as to the condition of the Indians in another form, that the Supreme Court, relying on the inferences to be drawn from that law, decided that they were citizens, and subject, like all others, to the laws of the State. But, since the reversal of this case, the opinion of chancellor Kent is considered to be the law of the State. How much aid, then, to the doctrines of the report of the committee on Indian affairs, can be drawn from the course of judicial decisions in New York, even since the passage of the Act of 1822, I leave to you to determine, and will dismiss this part of the subject with the remark that, if, by the public or conventional law of that State, or the Union, whether arising from treaties, or founded on any political principles of our system, the Seneca nation held their sovereignty in 1822, that Act could not rightfully take it away.

I shall cheerfully concede that we are to look to the acts of the Colonies, and especially of the States and the federal government, to determine the rights of soil and sovereignty claimed by the Indian nations; but I shall be compelled to detain you longer than I should have done, had the committee on Indian affairs claimed with less confidence, and given us better proof, that the fundamental principle that the Indians had no right to either, had never been abandoned, either expressly or by implication. Whatever may have been the public law before the revolution, it would be quite sufficient to settle this question conclusively in favor of the Indian nations, by showing what the acts of the old Congress, the States, and the federal government, have been from the declaration of independence to the present time. But, as we find upon our tables a collection of colonial laws, some of which were passed nearly two centuries ago, I will trouble you with some reflections that have occurred to me on this mode of disposing of the difficulties thrown in the way of gentlemen by the history of later times.

I cannot agree, that we are to go back quite so far, to ascertain the public or conventional law of the federal government,

or to look beyond the revolution, for the political law of the States. This collection of laws certainly contains some, chiefly of an early date, which may now appear to be somewhat whimsical; and there is no doubt that many could be found, which would show less regard to Indian rights, and perhaps to the common claims of humanity, than some of these. There may be much to disapprove and much to lament in our early history. I cannot say that I have found much instruction from the extracts laid before us of these early laws of the colonists; and I certainly feel no gratification that they have been rescued from oblivion, and placed among the documents of this House. I am sorry to see them here. It would not, however, be difficult to account for the origin of them, without attributing them to a spirit so unfavorable to the claims of the native inhabitants of this continent, as the committee on Indian affairs seem to have assumed.

It would be rather remarkable, if we could show that Indian rights were always held in high respect, or that treaties with Indians were always strictly observed. We must make great allowances for the early colonists. They were settled here, at a great distance from Europe. They were little regarded, and altogether unprotected by the mother country. Their vicinity to these fierce and warlike nations often produced dangerous collisions with them. A state of exasperation sprung up, which led to merciless wars and bitter and implacable resentments. The French were on the other side of the Indians, and sometimes excited them even to the extirpation of the English colonists. If we consider what the state of society was, and how strongly the principle of self-preservation is implanted in the human heart, we should rather wonder that the committee on Indian affairs had not been able to find much more in our early history to sustain their positions. Was it to be expected that our fathers were to be more than men, in the critical and afflicting situations, in which we know from history they were often placed? Would you look for calm philosophy in men whose families were awakened from their pillows at midnight by the yell of the war-whoop?—when they fled, naked, in the depth of winter, to the nearest thicket for refuge from the tomahawk?—when they looked back upon the conflagration which lighted up the pathless forest around them?—when they returned to the burning ruins, and saw the gate-posts of their dwellings sprinkled with the blood of their children, and the remnant of their families swept into captivity?—or when they gathered from the scorching ashes the calcined relics of all they had held dear on earth? If we cannot justify that extremity of retaliation to which human nature, in such circumstances, could be tempted, let us be just enough to their memory to forbear to reproach the errors of their social affections. Why, Sir, do we not go back, and bring up, for our example at this day, other laws, of our own or other countries, more gravely enacted, and quite as rigorously enforced? We might, perhaps, be able to justify the practice of making slaves of the Indians;

or, if we should be inclined to go back still farther, we could justify the putting of prisoners of war to death. It is not half a century since the African slave-trade was generally sustained by the laws of Christian nations. I should be very sorry to believe that the government was driven to justify the passage of this bill under any examples like these; or that we should be forced to confess that we and all the world have made no advance, for two centuries, in political science, or the morality of the code of public law, by which enlightened nations are willing to be governed. I hope that, during that time, our society has gone forwards, and not backwards. We boast much of our improvement in other things; and why should we not be willing to admit it in this? I protest, at least, against going back to the time when the fires of Smithfield were lighted up; and I cannot consent to take the expulsion of the French from Acadie as a fit model to illustrate our duties to the Cherokees.

We had better come down to later times—after Christianity had shed its pure light more clearly upon the world—after the colonial governments had become better established—the code of public law better considered, and the duties of nations better understood and defined. It will be quite as well for us to see what our own governments have done in the last fifty years, and ask ourselves if we can honorably repudiate this portion of our history. We may, perhaps, find ourselves so hemmed in on all sides, that this question is not to be debated at this day. If it should turn out to be so, it will profit us very little to know that, in a winter's search among the archives of one of our historical societies, we have been able to find a single treatise, written a century ago, to prove that the Indians never had any rights at all on this continent. I have looked into that work of the Rev. John Bulkley, from which the gentleman from Tennessee read us an extract; and it is very true that it makes out the whole case. The learned author zealously maintains that the Indians were in a state of nature; that they had no homes and no governments, and, consequently, no more right to the soil or sovereignty than the animals which they followed in the chase.

This is the substance of his argument, and he undoubtedly convinced himself of the truth of his hypothesis. But to prove that against our treaties, is to prove nothing, unless it be shown that we are in a state of nature too, and that men in a state of nature are released from the moral law of nature. It would be much easier to get rid of our treaty obligations, by assuming at once that Christian nations were not bound to keep their faith with infidels; and plentiful casuistry can be found for that too. This matter is not to be disposed of in that way, nor will it be hereafter. It is too late for us to deny our claims to be considered a civilized people; that we are willing to acknowledge the public and social law of the human family, and to be bound by that code of universal morality, which is confessed by every government, which feels it to be honorable to stand

within the pale of Christian nations. It is not a trifling thing for us to start any principles at this day, on which we may claim to absolve ourselves from the obligation of that faith, which we have pledged in all our Indian treaties. The question is too solemnly settled. If it was now an original question, and a mere speculative inquiry, we might treat it as a theme for the exercitation of ingenuity with a better grace, and shelter ourselves from the imputations which may follow, under some more plausible apology. But we cannot approach our Indian treaties on any side, without finding them secured by sanctions which cannot safely be despised.

I fully admit, that, shortly after the discovery of America, the principle became established by European nations, that they held their dominions here, as among themselves, by the right of discovery, and that this doctrine must be considered as settled at this day, let its origin have been what it may. We should hold a maxim of so long standing in the greatest respect. Some inconveniences may have followed from uncertainties in the history of the early discoverers, and the difficulty of its application to the claims of nations, as the population advanced into the interior. But, from the very nature of the subject, any rule would probably have led to some collisions. This may have been considered the best; and almost any rule was preferable to none. It was clearly better for England, and probably for France too, to establish this rule, than to submit the question of title to the decision of the pope, who claimed all undiscovered lands as his spiritual patrimony, and parcelled out his unknown dominions on maps, which furnished him nothing but degrees of longitude to define the extent of his earthly donations. We must consider, therefore, that the question of priority in right is to be settled by priority of discovery. Occupation does not seem to have been at first considered as strictly essential, though it was generally taken symbolically. It is probable, too, that this rule had no reference, originally, to any question growing out of the title of the natives. The morality of such an application of it would have more seriously merited the sarcasm of one of our poets, who has said,

> "The time once was here, to the world be it known,
> "When all a man sailed by or saw was his own."

As the spirit of discovery advanced, the claims of the native occupants who might be found here presented another question. The voyages of Columbus had shown it to be probable, that every part of the new world was peopled. It was necessary to find some semblance of principle to dispose of their title. In an age which was overshadowed with superstition, and when the human mind was darkened by bigotry, it was not found difficult to silence conscience, and even enlist the religious feeling of mankind in favor of the schemes of avarice and ambition. They were, therefore, cloaked under the garb of religion. Ojeda's proclamation will show us the nature of the claims of Spain to the soil and sovereignty of South America against the natives:—

"I, Alonzo de Ojeda, servant of the most high and powerful kings of Castile and Leon, the conquerors of barbarous nations, their messenger and captain, notify to you, and declare, in as ample form as I am capable, that God our Lord, who is one and eternal, created the heaven and the earth, and one man and one woman, of whom you and we, and all the men who have been or shall be in the world, are descended. But, as it has come to pass, through the number of generations during more than four thousand years, that they have been dispersed into different parts of the world, and are divided into various kingdoms and provinces, because one country was not able to contain them, nor could they have found in one the means of subsistence and preservation; therefore God our Lord gave the charge of all those people to one man, named St. Peter, whom he constituted Lord and head of all the human race, that all men, in whatever place they are born, or in whatever faith or place they are educated, might yield obedience unto him. He hath subjected the whole world to his jurisdiction, and commanded him to establish his residence at Rome as the most proper place for the government of the world. He likewise promised, and gave him power to establish his authority in every other part of the world, and to judge and govern all Christians, Moors, Jews, Gentiles, and all other people, of whatever sect or faith they may be. To him is given the name of pope, which signifies admirable, great father and guardian, because he is the father and governor of all men, &c.

"One of these pontiffs, as lord of the world, hath made a grant of these islands, and of the terra firma of the ocean sea, to the Catholic kings of Castile, Don Ferdinand and Donna Isabella, of glorious memory, and their successors, our sovereigns, with all they contain, as is more fully expressed in certain deeds passed upon that occasion, which you may see, if you desire it," &c. He then requires them to acknowledge the pope and the king as the lord of "these islands;" to embrace their religion, and submit to his government, and concludes thus: "But if you will not comply, or maliciously refuse to obey my injunctions, then, with the help of God, I will enter your country by force. I will carry on war against you with the utmost violence. I will subject you to the yoke of obedience to the church and the king. I will take your wives and children, and will make them slaves, and sell and dispose of them according to his majesty's pleasure. I will seize your goods, and do you all the mischief in my power as rebellious subjects, who will not acknowledge or submit to their lawful sovereign. And I protest that all the bloodshed and calamities which shall follow are to be imputed to you, and not to his majesty, nor to me, nor to the gentlemen who serve under me; and, as I have now made this declaration and requisition unto you, I require the notary here present to grant me a certificate of this, subscribed in proper form." So much for the Spanish title.

The state of feeling in England, too, was favorable to the same code of public law for America. Rymer has given us at large the commission of Henry VII. to the Cabots, from which I have taken an extract. This king was a near family connexion of Ferdinand of Spain. The tenor of this commission is to sail with the king's vessels, "*ad inveniendum, discooperiendum, et investigandum quascunque insulas, patrias, regiones sive provincias Gentilium et infidelium, in quacunque parte mundi positas quæ Christianis omnibus ante hæc tempore fuerunt incognitæ.*"

They are then commanded to take possession of their discoveries. The Latin is,as barbarous as the doctrine. No translation could do it full justice. It is not improbable that this paper was the work of Empson and Dudley, who were the confidential advisers of Henry VII. Their characters are well known to all who have looked into any history of that period. The kingdom is said to have never been in a more disreputable condition than it was at that time. No man was safe; and this reign is said to have been chiefly distinguished by its rapacity and meanness. The successor of this king rewarded the crimes of Empson and Dudley by a bill of attainder.

James I. made some improvements upon these examples of his predecessors. A king who held his notions of prerogative at home was not apt to respect the rights of those abroad very highly. He commissioned Richard Penkevel to sail on a voyage of discovery, and took care to make "assurance doubly sure" to the lands of the natives of America. He prescribed in Penkevel's commission the tenure by which the lands were to be held, before the voyage was even commenced, declaring that they should be held "of Us, as parcel of our manor of East Greenwich, in Kent, in soceage, and not *in capite*." It was on a notion derived from some commission or charter of that sort, that the right of parliament to tax America was maintained about the time of our revolution, on the ground that we were represented in the house of commons as parcel of the county of Kent. Now, Sir, it is useless for gentlemen to puzzle themselves with learned theses and ingenious disquisitions, to show that the European nations would have been justified in expelling the natives from their lands, on the ground that they were in a state of nature, and that man in a state of nature has no right to any thing which he holds—not even to his life. King Henry, James, Ferdinand and the pope, set up no such doctrines themselves. They doubtless asserted the best which they could find, and ought to have the privilege of being heard for themselves, and justifying themselves upon their own principles. We may search as closely as we can into the history of the claims they set up, and shall find, at last, that they were defended solely on the ground that these were heretic and infidel countries, and that the claims of heretics and infidels to the earth were entitled to no regard in preference to Catholic dominion. But as the age of superstition and bigotry passed away—as prerogative became weakened, and popish supremacy fell into disrepute—as the minds of men became enlarged, and the public law improved—better principles were established. Before the beginning of the last century, moral and political science had become too far emancipated from the superstition and intolerance of the times of Alexander VI., as well as the Tudors and Stuarts, to sanctify any longer the violences which had been committed in the name of religion and prerogative. Grotius had long before given the true foundation of all original title. "Primus acquirendi modus est occupatio eorum *quæ nullius sunt*." We have the right to take that which others have not already appropriated to themselves, but we have no right to take away our

neighbor's property. This was the rule laid down by that great civilian and Christian moralist. Then it came to be held by some, that Indian occupation was no occupation for any purpose; that it was the state of nature without the security of natural law. Some were so very liberal as to admit that the Indians were men, but held that they roved over the earth as vagrants and outcasts of the human family, with no more title, even to what they actually cultivated, than the brutes that fled before them, or the winds which passed over the forest, and that they were fair subjects for force or fraud for all who might find it to be their interest to ensnare or hunt them down. There were John Bulkleys before 1734, who held to this doctrine as stoutly as John Bulkley of Colchester. But I doubt if any other treatise like this can be found in the whole history of New England. Why these people were, above all others, to be excluded from the social law of mankind, was not as closely inquired into as it might have been. It was true that their kings and sachems had few or no prerogatives. They were generally governed by councils assembled from the whole nation. But if the head men and warriors proved to be sometimes refractory, the kings had no power to send them to Tower-hill or Tyburn. They lighted up no fires for heretics, and never sent their own prophets to the stake. They roasted their enemies only. They were ferocious and merciless in war, but they had no St. Bartholomew days. They held large tracts of uncultivated country, but they had no laws of the forest. It was neither death nor transportation for a starving man to take a deer; and it is probable they never heard a discussion on the morality of spring-guns. They believed in witchcraft as well as some others of their fellow-men; and in that they came somewhat nearer to a certain king, who sat in his closet with his treatise on demonology open before him, and conveyed away their country, by parchment and green wax, before he knew where it was to be found. We cannot deny that the European governments originally held the rights of the Indian nations in very little regard. There were great temptations to treat them lightly, and they were not looked upon with that deference to the sounder principles of justice, and that humanity which has since so highly improved the moral law of nations. The spirit of avarice was excited, and the thirst of dominion was tempted, by the developements of the resources of the new world. Grants and charters followed, and were often dispensed as rewards to favorites. But, Sir, whatever may have been the theories on which the government at home asserted its supremacy, I deny that our English ancestors, who first colonized these States, ever countenanced that disregard of Indian rights, or carried into practice that system of injustice to the native inhabitants, which has been asserted in the report of the committee on Indian affairs. On the settlement of the country, one of two courses was to be pursued—to deny altogether the claims of the Indian occupants for any purpose, and to dispossess them by violence, under any plausible or convenient pretext, or to treat them as holding a qualified right in the soil, and extinguish their title honestly by purchase. We have already

seen, in the proclamation of Ojeda, the system pursued by Spain. The natives were treated as fit for spoil only. The history of Spanish America is the most disgraceful tissue of injustice, cruelty and perfidious villany, which stains the annals of Christendom; and Spain has suffered for her crime the retributive justice of Providence. But, to the honor of our ancestors, history has given us no North American annals like these. They held the doctrine of discovery so far as to protect the chartered rights of the colonies against the encroachments of others; but they never sanctioned any system which left the Indian nations unprotected against themselves, and fit subjects for lawless plunder. They were men who acted up to their professions before the world. The honorable gentleman from Tennessee, in asking where we should look for the monuments of William Penn, directed us to the noble institutions and enviable prosperity of Pennsylvania. This is all very just to the name of Penn, but it falls short of full justice to his memory. I can tell him where he can find another monument to the fame of that excellent man. Vattel has perpetuated his name to all ages, and in all nations, in that work in which he has commended to all mankind the invariable respect, in which William Penn and the Puritans of New England held the right of the native inhabitants of America to their country.

It is very true, that, in the colonies, the crown was considered as the only legitimate source of title for its own subjects; and in most of them the lands were generally held under patents from the crown, or the colonial governments. This was early established, and continues to be maintained to this day. The discoveries had been made under commissions from the crown, and possession was taken in its name. As between the king and his subjects, the lands were treated as the domain of the crown, and Indian purchases were not admitted against the grants of the king or his title. He was considered, in theory, in the light of an original feudal proprietor of the country. It was therefore said, that what otherwise might have been called, at the bar of the courts, the seisin of the Indian nations, was nothing more against the crown than a naked occupancy. By the original title of the colonists, under their charters, they held, in fact, under the king, as the lord paramount of the realm. We hold this doctrine ourselves, so far as it applies to our governments. But we claim no supremacy over the Indian right, even in theory, because they are to be treated as in a state of nature, and without governments of their own, which we have never acknowledged, or as heretics and infidels. Instances may doubtless be found in our history, (and the committee have been able to collect a few,) in which there was occasionally collision between some of the colonists and the Indian nations on the point of title. It is probable that, in some few cases, injustice was done. But the practice of the colonies settled down at last in favor of the sanctity of the Indian title to their lands.

The committee have suggested that we should not give much weight to "the stately forms which Indian treaties have assumed, nor to the terms often employed in them," but that we should

rather consider them as "mere names" and "forms of intercourse." If treating these Indian nations as proprietors of a qualified interest in the soil—as competent to enter into treaties—to contract alliances—to make war and peace—to stipulate on points involving, and often qualifying, the sovereignty of both parties, and possessed generally of political attributes unknown to individuals, and altogether absurd in their application to subjects, is nothing more than "*mere names*," and "*stately forms*," then this long practice of the crown, the colonies, the States and the federal government, indeed proves nothing. Words no longer mean what words import, and things are not what they are. But these treaties have been looked upon as something quite substantial in the time of them. Things as firmly settled as these are not to be easily moved. This most honorable portion of our history is not to be obliterated by a dash of the pen. From a period not long anterior to the revolution in England, there are numerous Indian treaties made by agents of the crown as well as the colonies. These were doubtless made with the full approbation, and, in many instances, under instructions or advice from the crown officers. They have been acted upon and acknowledged in a way that puts all question as to their obligation at rest. The crown and the colonies found it to be their interest to take that course. The motives which led to it were various, and are quite obvious even to a careless reader of our history.

As long ago as 1684, we find a "*definitive treaty*," made at Albany, between lord Effingham, then governor of Virginia, and colonel Dongan of New York, with the Five Nations. One of the chiefs said to them on that occasion, that "this treaty had spread so far in the earth that its roots would reach through the whole land, and, if the French should tread upon the soil any where, the Indian nations would immediately feel it." They kept this treaty faithfully, and the colonies owed their security, for many years, to it. Shortly before our revolution, the principle may be considered to have been so far settled, that these nations might well claim to be invested with the capacity to contract in that way, as qualified sovereignties. The doctrines held in the time of Henry VII. and the Stuarts were completely changed before the declaration of independence. On the 8th of April, 1772, general Gage issued at New York, "*by order of the king*," a proclamation fully recognising the obligations of the crown, under its treaties with the Indian nations.

I do not mean, Sir, to be understood to say, that this acknowledgment of qualified sovereignty would have been admitted by the British government to the full extent that we have carried it since. We found it so far settled at the period of our independence, that we openly adopted it as the public law for ourselves. We have ever since placed our relations with the Indians on that footing, and they are not to be disturbed now on any fanciful hypothesis. As to their right to the soil, however, that was long before solemnly settled in practice, and has remained so for a period too long to be now questioned. New England is held under fair and honest purchase from the natives. A very small part of

it was ever claimed by actual conquest. Pennsylvania and New York were acquired in the same way. Mr. Jefferson says, in his Notes, speaking of Virginia, "That the lands of this country were taken from them by conquest, is not so general a truth as is supposed. I find, in our historians and records, repeated proofs of purchase, which cover a considerable part of the lower country; and many more would doubtless be found on further search. The upper country, we know, has been acquired altogether by purchases made in the most unexceptionable form." There is not a foot of land now held by Georgia, for which we cannot produce, from authentic history, her title by purchase from the Indian nations. This system, Sir, was conscientious in itself, and founded in good morals. We may here stand up boldly, like honest men, before all mankind. I am not willing to blot out these fairest pages of our history. I will not consent that these proud monuments of our country's honor shall be defaced. I would not darken the living light of that glory, which these illustrations of the justice of our ancestors have spread over every page of their history, for all the Indian lands that avarice ever dreamt of, and all the empire which ambition ever coveted.

The administration appears to have conceded to Georgia the right of sovereignty and soil which she claims, in the report of 1827, over the Cherokees and their lands, under the impression that such was the operation of the treaty of 1783. The Secretary of War has placed it on that ground, and assumed, in that respect, the principles of the Georgia report. We have never considered the treaty as any thing more than the acknowledgment of our independence, and we took the rights of the crown by accession. The king admitted that he treated with us as a power already independent. He granted us nothing of our sovereignty. He merely relinquished, for himself and his successors, his claim to the government, propriety and territorial rights over the country. We do not claim these from his gift. The treaty took no such form. We became independent, in fact, in 1776, and our national capacity came into existence at that time. We were then at liberty, as an independent power, to adopt any policy, or assume any principles, we believed to be just in regard to the Indian nations. It is too late to inquire whether we might not have begun differently. We must be bound now by the system which we in fact adopted; and our inquiry should be to know, by what principles of public law we are pledged before the world to abide, in our conduct towards the Indian nations.

What doctrines, then, have been assumed, acknowledged, affirmed, established, and acted upon for almost half a century on our part, and trusted to by those we have dealt with? Before you made the treaty of 1783, you had acknowledged the qualified sovereignty of some of these nations. In 1776, we guarantied to the Delaware nation "all their *territorial rights*, in the fullest and most ample manner, as it had been bounded by *former treaties*." The treaty states that the article was inserted to obviate the false suggestion, which our enemies had, by every artifice in their power, inculcated upon all the Indians, that the United States intend-

ed to extirpate them, and take possession of their country. In the treaty of 1804, they were acknowledged to be the "*original proprietors*;" and you then admitted them to be the "*rightful owners*" of the lands there referred to. An arrangement was provided, in some of your treaties, for allowing the Delawares and Cherokees deputies to the Old Congress. I could refer you to numerous treaties, before and since the treaty of 1783, which conclusively repel the notion that the Indians were transferred to us as serfs of the crown. It would be an unpardonable waste of time to examine them, or a fiftieth part of them. They include almost every Indian nation within the States. The Old Congress acted throughout on the principles which I have stated.

The Constitution has put to rest a question which arose out of the power of Congress under the Confederation, and shows how largely it was intended to vest the management of Indian affairs in the new government. The articles of confederation had narrowed the power of "*regulating trade*, and *managing all affairs* with the Indians," by confining it to such as were not members of any of the States, and providing that the legislative right of any State within its own limits should not be infringed or violated. The Constitution omitted these restrictions. Mr. Madison, in the Federalist, speaking on this point, says:

"The regulation of commerce with the Indian tribes is very properly *unfettered* from two limitations in the articles of confederation, which render the provision obscure and contradictory. The power is there restrained to Indians, not *members* of any of the States, and is *not to violate the legislative right of any State* within its own limits. What description of Indians are to be deemed members of a State is not yet settled, and has been a question of frequent perplexity and contention in the federal councils. And how the trade with Indians *not members* of a State, *yet residing* within its legislative jurisdiction, can be regulated by an external authority, without so far intruding on the internal rights of legislation, is absolutely incomprehensible. This is not the only case in which the *articles of confederation* have inconsiderately endeavored to accomplish impossibilities; to reconcile a partial sovereignty in the Union, with a complete sovereignty in the States; to subvert a mathematical axiom, by taking away a part, and letting the whole remain."

All which can be said in any sense to have passed to the United States or to the States from the crown, was a naked right of pre-emption to what were called the crown lands. I speak advisedly when I say that the United States have solemnly and deliberately admitted it. This question was fully examined by the government almost forty years ago, and we stand pledged in such express terms to the Indian nations on this point, that our lips are sealed. They can show you a case on their part, that defies all cavil and all criticism. I know that this is strong language, but I have measured my words. I know well the extent of what I say, and what I pledge myself to show in saying what I do. It is not a thoughtless pledge, and it shall be redeemed by proof from the archives of your own government, which all the subtleties of in-

genuity cannot evade, and which will annihilate that learned and labored hypothesis, on which the rights of the Indians have been denied by this administration and in these halls. I invite the attention of gentlemen to the papers, which can be produced on this subject, and should be gratified to hear what answer is to be made to them.

Before general Wayne moved with the army in 1793, general Washington determined to make one more effort for peace with the Indian nations then confederated against us. The cabinet was convened, and the whole subject of a negotiation was laid before them. The question as to the rights of the Indian nations was there deliberately examined, and the opinions of the cabinet were required by the President. In the first place, Mr. Jefferson has furnished us fully with his own opinion in the late publication of his papers.

"February 26, 1793.

"First Question. We were all of opinion that the treaty should proceed, merely to gratify public opinion, and not from an expectation of success."

* * * * * * *

"Second Question. I considered our right of pre-emption of the Indian lands, not as amounting to any dominion or jurisdiction, or paramountship whatever, but merely in the nature of a remainder after the extinguishment of a present right, which gave us no present right whatever but of preventing other nations from taking possession, and defeating our expectancy; that the Indians had the full and undivided sovereignty as long as they chose to keep it, and that this might be forever; that as fast as we extend our rights by purchase from them, so fast we extend the limits of our society; and as soon as a new portion became encircled within our line, it became a fixed limit of our society."

Another question seems to have arisen in the cabinet, which, as far as I can gather from the book before me, (for I have not been able to lay my hand on the original papers,) involved a re-cession to the Indians of certain lands purchased before. Mr. Jefferson was of opinion that the government could "no more cede to the Indians than to the English or Spaniards, as it might, *on acknowledged principles*, remain as irrevocably and eternally with the one as the other."

The negotiation proceeded. Beverly Randolph, Benjamin Lincoln and Timothy Pickering, were nominated to the Senate, on the 1st of March, as commissioners, and their appointment confirmed. Their instructions are expressed on the face of them to have been given by general Knox, "by the *special direction* of the *President of the United States*." A part of their address to the Indian council is as follows:

"*Brothers*—Now listen to another claim, which probably has more disturbed your minds than any other whatever.

"*Brothers*—The commissioners of the United States formerly set up *a claim to your whole country* southward of the great lakes, as the property of the United States, *grounding this*

claim on the treaty of peace with your father, the king of Great Britain, who declared, as we have before mentioned, the middle of those lakes, and the waters which unite them, to be the boundaries of the United States.

Brothers—We are determined that our conduct shall be marked with openness and sincerity. We therefore frankly tell you, that we think *those commissioners put an erroneous construction on that part of our treaty with the king.* As he had not purchased the country of you, he could not give it away. He only relinquished to the United States *his claim* to it. That claim was founded on a right, acquired by treaty with other white nations, to exclude *them* from purchasing or settling in any part of your country; and *it is this right which the king granted* to the United States.

* * * * * * *

Brothers—We now concede this great point. We, by the *express authority of the President of the United States, acknowledge the property or right of soil* of the great country above described to be *in the Indian nations*, so long as they choose to occupy the same. We only claim particular tracts in it, as before mentioned, and *the general right granted by the king, as above stated.*" * * * * * *

These papers are to be found in the manuscript volumes of the Senate. They were communicated to that body by general Washington. The originals were doubtless in the war department when the present Secretary wrote his letter of the 18th of April, to the Cherokee delegation. In an address of Mr. Jefferson to the Cherokees, during his administration, he says:

"I sincerely wish you may succeed in your laudable endeavors to save the remnant of your nation by adopting industrious occupations, and a *government of regular law.* In this, you may *always rely* on the *counsel and assistance* of the *United States.*"

These, Sir, are "the lights that flow from the *mind that founded* and the mind that *reformed* our system," speaking of which, one has said to his country, that a diffidence, perhaps too just, in his own qualifications, would teach him to look with reverence to the examples of public virtue left by his illustrious predecessors.

Mr. Jefferson's opinion to general Knox in 1791, speaks a language that cannot be misunderstood. He there says, "Government should firmly maintain this ground; that the Indians have a right to the occupation of their lands, *independent of the States within whose chartered lines they happen to be; that, until they cede them by treaty, or other transaction equivalent to treaty, no act of a State can give a right to such lands;* that neither under the present Constitution, nor the ancient Confederation, had any State, or persons, a right to treat with the Indians, without the consent of the general government." What is the answer, Sir, which the Cherokees and Creeks have received to all this? The modern records of the department of war, and

the papers on our table, will show us no very enviable contrast to that just and humane policy, which the administration of Washington solemnly pledged us to follow in our intercourse with these unfortunate people. If any thing can bind a government, we have not a pretext for denying the qualified sovereignty of the Indians. We have dealt with them by commissioners appointed under all the forms of the Constitution. We have asserted our compacts to be definitive treaties with them as nations. We have ratified them like other treaties. They are promulgated in the statute-book as the law of the land. We have not only recognised them as possessed of attributes of sovereignty, but in some of these treaties we have defined what these attributes are. We have taken their lands as cessions—a term totally senseless if they are citizens or individuals. We have stipulated for the right of passage through their country, and for the use of their rivers—for the restoration of prisoners—for the surrender of fugitives from justice, servants and slaves. We have limited our own criminal jurisdiction and our own sovereignty, and have disfranchised our citizens by subjecting them to other punishments than our own. With the Cherokees you have, in one treaty, stipulated the manner of proceeding for injuries, by a formal declaration of hostilities before war. These are some of the most prominent and remarkable of your acts. You cannot open a chapter of Vattel, or any writer on the law of nations, which does not define your duties, and explain your obligations. No municipal code reaches them. If these acts of the federal government do not show these nations to be sovereign to some extent, you cannot show that you have ever acknowledged any nation to be so. The condition of these Indian nations is not treated of by authors on public law in Europe, because no such condition of things exists there. You may find some analogies in former times, but they will turn out to be against you. If you look to the moral law, you can find no escape there.

I might ask, Where was your authority to make the compact with Georgia? The lands to be acquired were not to be of the domain of the general government. What is the bill now before us? Who are the "*nations*" with whom we have "*existing treaties?*" Who are to receive new guaranties from the United States, if, after this, they will accept another from us? Who are those that the *President* is to exercise a "*superintendence*" over? Are they *citizens?* The framers of this bill have not been able to make its provisions intelligible, without admitting much which they deny in sustaining it. The guaranties now proposed are as much a dismemberment of the sovereignty of the United States as former ones were of Georgia. The only difference is, that the President alone is to act in this matter, while your treaties were made by the States in the Senate, where the sovereignty of Georgia was represented. If there is any thing in this part of the argument against the Cherokees, gentlemen are bound to protect the sovereignty of the United States, by voting against this bill. The President in-

forms us, that they are to have "governments of their own choice" located on our domain.

There is nothing alarming to our own security or our pride in admitting this sovereignty in the Indian nations. We took care, in the first instance, to obtain all necessary limitations of it. They confessed themselves to be under our protection; that their lands should be sold to us only; that we should regulate their trade; and we stipulated for various other restrictions on their part. Great foresight and wisdom in this respect were shown, by those who first admitted them to their present condition. The treaties manifest how carefully this matter was guarded, and we have suffered no inconveniences from it, of which reasonable men should complain. We have made them subordinate to us, in all essential points, by express treaties. Our intercourse laws are founded on the system we have adopted; and, though their constitutionality has been questioned too, it is not probable that Mr. Jefferson approved any law that palpably violated the reserved rights of the States. If the question before us is not settled at this day, there is nothing settled in the government. Every thing is to be kept floating. We shall never know what our institutions are, nor will others know when, or whether to trust us at all.

The mischiefs which are to follow to the Cherokees are incalculable. They were told forty years ago what we then admitted their rights to be. They are now in a great measure reclaimed, under our counsels, from their former condition, and have begun to realize the blessings of civilization. When they have just reached that point, which is successfully calling forth their talent, and developing their capacity for moral improvement, we are about to break up their society, dissolve their institutions, and drive them into the wilderness. They have lived for a short time under a government of their own, which very able counsel (Mr. White of the Senate) has vindicated in one of the most learned and conclusive opinions I have ever met with. Their right to adopt for themselves the institutions which they have established, and to assert the qualified sovereignty which they claim, is demonstrated in that paper, and settled upon ground that no argument or ingenuity can shake. This opinion, too, was given upon great deliberation, and shows that the whole question was cautiously as well as thoroughly examined. It is not to be viewed in the light of a mere professional opinion. It exhibits the deductions and convictions of the mind of a civilian and statesman, drawn from a comprehensive and masterly view of the subject, in all its bearings and relations. If there could be doubt on any point considered in it, we might question the right of the Cherokee government to tax the United States traders. Their treaties had conceded that the regulation of their trade should be managed by the general government; and such an exercise of power, on the part of the Cherokees, might essentially defeat the objects and stipulations of the treaties.

What, Sir, is the character of this government of the Cherokees, which appears to have offended the pride of Georgia so highly? They claim no jurisdiction over the concerns of any body but themselves. They have always had this, and always exercised it. Their government has lately assumed a more convenient form, and one better adapted to their improved condition. Their domestic institutions show more of civilization and good order than we have seen among them before; and I hope we do not reproach them for that. Their regulations for the allotment of their lands, and the better government of their own people, interfere with nobody. I have never yet been able to see the force of that suggestion, which treats them as a State within the sense of that part of the Constitution which forbids the erection of any new State within the jurisdiction of any other without its consent. I think it has no application to the case. The Cherokee government has neither been formed or erected as one of the States of this Union, or to be admitted into it. It is no more calculated to alarm the jurisdiction of any State than a certain kingdom lately projected on Grand Island, the institutions at New Lebanon, or the family government at New Harmony.

But it has been said, in answer to the claims of the Indians, that we hold our sovereignty over them and their lands by conquest, as well as discovery. I shall say but little as to that pretension. They may have been defeated in battle. Their country may have been overrun by our armies. We may have invaded them, and sometimes burnt their towns, and driven them into places of concealment. But it is essential to title by conquest, that we should have exercised the right which the laws of war allow to the conqueror. Have we taken away their lands, abolished their governments, and put them in subjection to our laws? If this has not been done, (and history shows that it has not,) it is too late now to say that there has been a time when we might have done it. So far from claiming to exercise this right, we have closed our hostilities by treaties ever since we became an independent government; and both parties were restored to their original condition, except on points which the treaties provided for. It must be considered, too, that when we set up the title of conquest, we seem to feel that discovery alone would not have reached the rights of soil against the native inhabitants; and I thought the gentleman from Tennessee felt pressed in making out his case, when he assumed that discovery gave us the right to follow it up by conquest. The war must at least be lawful to justify that title, in any case, on the score of morality. I do not think that the position can be sustained, that, because we have discovered any new country, we have the right to conquer it. If we choose to put it on the ground of mere force, I will not say that title by conquest may be denied, though the war may have been unlawful. But I do not agree that this was done on the discovery of America. Our history does not show it.

I forbear to take up more of your time on this part of the question, for I fear that I have already wearied your patience. But before I leave it, I beg leave to call your attention to one of the many luminous papers which have issued upon this subject from the department of war. We have found a pamphlet on our tables containing a letter, of the 25th of August last, to the Rev. Eli Baldwin, Secretary of a Board formed in the city of New York, for the "salvation of the Indians." This Board is pledged, in its constitution, to co-operate with the federal government in its "operations on Indian affairs." But this article has fortunately restricted that hasty pledge by an express condition "at no time to violate the laws" of the Union. Of these laws, the intercourse acts and treaties are certainly the most sacred in right and morals. In replying to a letter communicating to the President a copy of the constitution of this benevolent association, the Secretary of War availed himself of the occasion to take it upon himself to instruct the Board in that casuistry, by which the faith of our treaties might be impaired successfully. The argument is very brief, and the process quite summary, by which he accomplished this political absolution in our behalf. I do not feel at liberty to hazard the omission of a single word, that might impair its merit or obscure its clearness, by undertaking to repeat it from memory.

"How can the United States' government contest with Georgia the authority to regulate her own internal affairs? If the doctrine every where maintained be true, that a State is sovereign, so far as, by the Constitution adopted, *it* has not been parted with to the general government, then it must follow, as matter of certainty, that, within the limits of a State, there can be none other than her own sovereign power that can claim to exercise the functions of government. It is certainly contrary to every idea of an independent government for any other to assert *adverse* dominion and *authority* within her jurisdictional limits; they are things that cannot exist together. Between the State of Georgia and the Indian tribes within her limits, no compact or agreement was ever entered into; who then is to yield? for it is certain, in the ordinary course of *exercised authority*, that one or the other must. The answer heretofore presented from the government, and which you, by your adoption, have sanctioned as correct, is the only one that can be offered. Georgia, by her acknowledged *confederative authority*, may legally and rightfully govern and control throughout her own limits, or else our *knowledge* of the science and principle of government, as they relate to our forms, *are* wrong, and have been wholly misunderstood."

Now, Sir, all this may seem to be very clear demonstration to its author. I do not doubt that he honestly thought it must prove quite convincing to all who should have the good fortune to meet with it. With your leave, Sir,

"I'll talk a word to this same learned Theban."

I should like to know whether it ever occurred to him, in the course of his profound investigations, that the question to

be examined was, whether this was really the *internal affair* of *Georgia only* or not? It would have been better to have proved this conclusion than to have assumed it. He began to reason at the wrong end of the matter, and that is the misfortune of his whole argument. It must strike the mind of others, too, if the Secretary himself failed to discover it, that the powers which Georgia has in fact parted with to the general government, must be exercised within the States, or they cannot be exercised any where. Yet Georgia remains an independent government, as to all the sovereignty she has reserved. What more is there in that paper but a jargon of words? *Adverse authority—exercised authority—confederative authority!* I wish to hold the government of my country in some respect if I can, but I was ashamed to find the justification of one of its measures put forth in such a paper as this from one of the Executive departments. I trust that he answers for himself only, when he speaks of our knowledge of the principles of our own government, and then I will agree, that, if we are to judge from this paper, he knows very little about them.

We are less justifiable in applying the principles which have been asserted to the Indian nations in Alabama and Mississippi. Before these States were erected, they were the territory of the United States. The jurisdiction was in the general government. There were no State rights in existence there. We had solemnly guarantied to the Creek nation all their lands, and recognised their sovereignty under various treaties. These States have but recently been admitted into the Union. Yet the President has said in his message, "It is *too late to inquire* whether it was *just* in the United States to include them (the Indian nations) and *their territory* within the bounds of new States, whose limits they could control. That step cannot be retraced. A State cannot be dismembered by Congress, or restricted in the exercise of her constitutional power." It is not denied here, nor could it have been, that while this was the territory of the United States, it was competent for the government to admit the sovereignty of the Creek nation. But it is assumed, that the erection of this territory into States under the same Constitution which sustained the treaties, has abrogated our obligations. This casuistry will hardly mislead any very plain man. We are to be released from the effect of our treaties by our own act, against the will of the other party, who has faithfully kept them. Is it indeed too late to inquire if this be just? I know of no such maxim among nations, if it is to be found any where. The Constitution secures the inviolability of these treaties as effectually as it has the federal sovereignty of these new States. In acceding to the Union, they become bound with the other States in all their political and conventional obligations. If the older States remain bound by these treaties, (and no one, I presume, denies that,) the new States, as constituent parts of the federal sovereignty, are bound to respect and fulfil them too.

The history of our guaranties to the Cherokee and Creek na-

tions is stated at large in the executive journal of the Senate. General Washington came with general Knox to the Senate-chamber, and laid before the Senate the state of the difficulties existing between North Carolina and Georgia and these Indian nations. These States had protested against the treaties of the Old Congress as infringements of their legislative rights. General Washington stated that the Cherokees had complained that their treaty had been violated by the disorderly whites on the frontiers, but that, as North Carolina had not acceded to the Union, it was doubtful whether any efficient measures could be taken by the general government. In relation to the difficulties between Georgia and the Creeks, it was stated to be of great importance to Georgia, as well as the United States, to settle those differences, and that it would be highly embarrassing to Georgia to relinquish certain lands, which she alleged the Creeks had already ceded to her, and which her citizens had settled upon. To fix certain principles as instructions to the commissioners, general Washington stated several questions to the Senate for their advice. Among these was the subject of a cession from the Creeks of the lands in controversy, and one of the conditions to be offered them on that point was as follows:

"4th. A solemn guaranty by the United States, to the Creeks of their remaining territory, and to maintain the same, if necessary, by a line of military posts."

The Senate advised and consented to this, and the treaty was negotiated and ratified. The differences with Georgia appeared then to be finally settled.

On the 11th of August, 1790, general Washington stated to the Senate in a message, that as the obstacles to closing the difficulties with the Cherokees had been removed by the accession of North Carolina to the Union, he should now execute the power vested in him by the Constitution, to carry into faithful execution the former treaty of Hopewell, unless a new boundary was agreed upon; and proposed to the Senate several questions, as to the compensation to the Cherokees for that purpose, and the following condition:

"3. Shall the United States stipulate solemnly to guaranty the new boundary which may be arranged?"

The Senate consented that this guaranty should be given, and the treaty of Holston was made in conformity to it. It was negotiated by governor Blount. The manuscript volumes of the Senate show certain instructions from the government to governor Blount, of the 27th of August, 1790, which are so highly characteristic of the administration of general Washington, that I have taken a brief extract from them, which I beg leave to read:

"In order to effect so desirable a purpose upon proper principles, it is highly necessary that the United States should set the example of performing all those engagements, which by treaties have been entered into under their authority. It will be in vain to expect a consistent conduct from the Indians, or the approbation of the impartial part of mankind, while we violate, or suffer

a violation of, our engagements. We must set out with doing justice, and then we shall have a right to exact the same conduct from the Indians."

This is the history of your guaranties, and these the professions which you made when you offered them. They were given on mature deliberation, with the full knowledge of the claims of all parties, and were entered into with a solemnity which admonishes us that they cannot be safely trifled with. Against whom were they to operate? Not against foreign powers, for they had no claims, nor against the general government. It was the claims of the States to their country, which we stand pledged to resist until they consent to part with it peaceably. It is claimed again, now, by some of the States, that our power to contract with these nations, as qualified sovereignties, violates their jurisdiction. But we have seen that this question was fully before the Senate when we gave these guaranties, and general Washington then said, that since *North Carolina had acceded to the Union*, he should put forth the *power entrusted to him* by the Constitution, to execute the treaty of the Old Congress with the Cherokees. These guaranties cannot be executed at all unless the treaties and the intercourse laws are paramount to the laws of the States. The operation of the laws of Georgia, as well as Mississippi and Alabama, shows this.

I know that there is nothing on the face of these laws, which proposes to exert any direct force for the removal of the Indians. But, under the existing condition of things there, the moral effect of these measures will as effectually accomplish this end as your army could do it. The Indians themselves believe it, and the Secretary of War well understands that to be the inevitable consequence of them. I infer from a document on your table, that he has instructed your own agents to make use of them for that purpose. A letter from the Choctaw interpreter to the War Department, of the 27th of November last, says: "I was put in possession of the contents of *your letter* of the 31st ult. to colonel Ward, United States' agent to the Choctaws, and was ordered by him to interpret and fully explain the nature of the laws of Mississippi that were about to be extended over them, and the bad consequences that would attend, as they were not prepared to live under said laws. I have advised them on all occasions to make *the best arrangement with the government they possibly can*, and emigrate to the west of the Mississippi." The Secretary wrote to the agent of the Cherokees, since this measure has been pending: "The object of the government is to persuade, not coerce, their Indian *friends* to a removal from the land of their fathers. *Beyond all doubt*, they cannot be peaceable and happy where they are; yet still will they be protected to the extent that right and justice, *and the powers possessed*, require. Beyond this the President has neither the inclination nor the authority to go. It is *idle to talk* of *rights which do not belong to them*, and of *protection which cannot be extended*. The most correct plan is to disclose the *facts as they exist*, that all in interest may be warned, and, by timely precaution, escape those evils of which experience

has already afforded abundant indication *there is no avoiding*, situated where they are."

We can all understand language of this sort without the aid of an interpreter. But the Cherokees and Creeks have declared that they will not leave their country. They peremptorily refuse to go over the Mississippi. Why, then, have these laws of the States been extended to them at this particular time? We are told that this bill is only to come in aid of their voluntary emigration. But you have had their answer to that for years. Your table is covered by their memorials and protests against it. You have made large appropriations before now to effect that object, and have failed. Why, then, are you repeating these appropriations at this particular time? They are at your door, and tell you they will not accept them. Is there not reason, then, to believe that they are to be removed against their real consent and inclinations, though no actual force is meditated in any quarter? Individuals may doubtless be found to surrender the lands of the nation which they happen to occupy. These lands then pass to Georgia. The nations are to be put at variance among themselves. Their social institutions are to be destroyed. The laws of the States have done that effectually. The lands surrendered are to be covered with white men. Can the Cherokees then live there? Is that the protection which you have promised? Is that the execution of your solemn guaranties? Is that your dealing with your plighted faith and national honor? Sir, the confidence of these nations in the securities of their treaties and your good faith is shaken. They feel that they are abandoned—that your laws have ceased to protect them—that their institutions are destroyed—that the pressure to be inflicted on them is such that they cannot bear it, and that they must abandon their country when this House shall have sanctioned the measure before you.

The government is undoubtedly right in saying, that the Indians cannot live where they now are under these laws. And why, then, were they passed? We are told in one breath that they are mostly mere savages, and that all the efforts to reclaim them have failed; and in the next we hear, that, to carry into effect a very benevolent plan for their improvement, they are to be placed under the strict regulations of our state of society. Are we to understand by this that they are to be civilized by a legislative act? It is useless, Sir, to consider this matter gravely in that way. We do not deceive ourselves by it, and shall mislead nobody else. There is sagacity enough in the people whom we represent to understand it. Think you that, with the Georgia report before them, they will believe that the object of these laws is to reclaim the Indians, and improve their condition, so as to attach them more strongly to their country? The government has put this in its true light. The consequence will be, that, in their state of society, they can enjoy none of the practical benefits of the general laws of these States, and will be subjected, at the same time, to the whole range of their ordinary criminal jurisdiction, as well as another code applicable to themselves only. We hear it sometimes said, that they are to be admitted to the privileges of

citizens, as if some substantial privileges, which they do not now enjoy, were to be conferred on them. Why, then, do we find this bill here exactly at the time when they are to receive these favors? If they are really to receive any new privileges, will they not be more contented where they are, and less inclined to go beyond the Mississippi? It will be asked, too, by many who cannot understand this sort of reasoning, what particular benefits these States expect to obtain by extending their laws over some thousands of people who are said to be wild Indians, and bringing them within the pale of their society? There is certainly no State pride to be gratified by that. I shall not take up your time to answer questions of this sort. If these laws do not speak a language that can be understood here, they will be very well understood elsewhere. There is no reason to believe that Indian communities disturb the peace of these States, if their own citizens will let them alone. The only sufferers in that respect are the Indians. There are laws enough to meet that case, if government will do its duty, and execute them faithfully. The Indians are a peaceable and inoffensive people, advancing rapidly in moral improvement, cultivating their lands, establishing schools and churches, and disturbing nobody. They have already patiently borne what we should not submit to ourselves, and they will bear much more, if we choose to inflict it upon them. But they are not prepared to live under our laws, if we had the right to extend our jurisdiction over them without their consent. The courts of justice in these States will doubtless see that right is done so far as they are to administer the law in particular cases. But they will afford a slender protection against the operation of moral causes, which will reduce the Indians to the condition of outlaws in society.

I am not satisfied that the funds to be provided by this bill are to be used in such a manner as we shall be willing hereafter to approve. The Secretary of War said last year to our commissioners, "Nothing is more certain than that, if the *chiefs and influential men* could be brought into the measure, the rest would implicitly follow. It becomes, therefore, a matter of necessity, if the general government would benefit these people, *that it move upon them in the line of their own prejudices*, and, by the adoption of any proper means, *break the power* that is warring with their best interests. The question is, How can this be best done? Not, it is believed, for the reasons suggested, by means of *a general council*. There they would be awakened to all the intimations which those who are opposed to their exchange of country might throw out; and the consequence would be—what it has been—a firm *refusal to acquiesce*. The *best resort* is believed to be, that which is embraced in an appeal to the chiefs and influential men, *not together*, but apart, at their own houses; and, by a *proper exposition of their real condition*, rouse them to think of that; whilst *offers to them* of *extensive reservations* in fee simple, AND OTHER REWARDS, would, it is hoped, result in obtaining their acquiescence."

Now, Sir, disguise these suggestions as we may, there can be no successful dissimulation in language of this sort. It is sheer, open bribery—a disreputable proposition to buy up the chiefs, and reward them for treason to their people. It is the first time, so far as my knowledge extends, that such a practice has been unblushingly avowed.

There is more, too, before us, which should attract the attention of this House. I see by a pamphlet before me, that our superintendent of Indian affairs in the war department was sent to New York last summer to aid the benevolent institution, to which I have already alluded, with such information as he might possess in regard to these Indian nations. He delivered an address, on that occasion, in one of the churches of that city. In this he said, that, if the Indians were present, he would address them thus:

"*Brothers*—Whether is it *wise* in you thus to linger out a chafed, and impoverished, and disheartening existence, and die as your fathers have died, and leave the same destiny to your children; or to *leave your country*, and the *bones of your fathers, which cannot benefit you, stay where they are as long as you may?*"

I was shocked, Sir, when I met with the shameless avowal of such a sentiment, and addressed to such an audience too, by an agent of this government. I have no language that can express my detestation of it. No man, who cherished a spark of virtuous feeling in his heart, could have given it utterance. It deserves the marked reprobation of this House, as the guardians of the honor of the country, and the government ought not to retain him in his place a single hour.

I am admonished, Sir, by the duty which I owe to the House for their indulgence, to occupy your time no longer. But I ask gentlemen to review the history of this government faithfully, and decide, if, on looking to the afflicting condition of these people, and the certain consequences which are to follow, they can lay their hand upon their hearts as honorable men, and say that they feel clear in conscience in going any further with this measure. We are not dealing for ourselves in this matter. Our own reputation is not alone concerned. The character of the country is deeply involved in it. We shall not be able at last to disguise our co-operation, in removing these nations from their country. We may now flatter and deceive ourselves as we may, but the time will come when our responsibility can neither be evaded nor denied. It must be met, and it is better for us to consider now what we must meet. Our relations with the Indian nations are of our own seeking. We assumed our guardianship over them voluntarily, and we justified it, too, in the name of religion and humanity. We claimed it to be due from us, as a civilized, enlightened and Christian people, to them, to our own character, and the opinion of the world. They never asked it of us. We stretched out our arm towards them, and they took our hand in the confidence that we should act up to our professions. It was we who solicited their friendship, and not they

ours. It was done for our convenience too, and not theirs. We offered them our faith, and they trusted to us. To attest our sincerity and win their confidence, we invoked the sanctions of our holy religion. They have confided in us like children, and we have solemnly pledged our faith, before God and all mankind, to fulfil our promises to them righteously. We came here and sat ourselves down in their country, and not they in ours. They were then strong, and we were weak and helpless. They could have crushed us in the hollow of their hand. But we had fled from oppression and persecution in our own native land, and they received us here in theirs as friends and brothers. We have perpetuated their hospitality to our fathers on the gorgeous panels which surround us. If we cherish in our hearts the slightest sentiment of honor or the least spark of gratitude yet lingers there, we shall not be able to lift up our eyes and look around us when we enter these halls, without feeling the smart of that rebuke, which we deserve and must suffer for our perfidy. These memorials of their hospitality cannot be effaced until we shall have dilapidated these walls, or another enemy shall kindly inflict upon us a lesser disgrace.

We came to these people with peace-offerings, and they gave us lands. As we increased in numbers, we increased our demands, and began to press upon them. They saw us hemming them in on every side, and furrowing down the graves of their fathers. As their subsistence was wasting away, they remonstrated against us. We were deaf to their reproaches. They implored us to remember their kindness to us, but we turned away from them. They resisted at last, and flew to their arms. Fierce and bloody wars followed. We felt their power, and if they had been united, or had foreseen what we are now doing, we should not now be in these seats. We met again in friendship, and established our treaties with them. We pledged our faith, and gave them our solemn guaranties that we would come no farther. I hope that we shall feel it to be our duty to observe them like honest men.

But are we asked, Will you leave things in their present condition? Will you refuse to treat with them? No. But if I am asked when we shall treat, I am ready to answer, Never, Sir, never, till they are at perfect liberty, and free from all restraint. I should not consider a treaty made with them, in their present wretched and forsaken condition, as morally binding on them. I will not consent to take advantage of men in their situation. I am sick—heart sick—of seeing them at our door as I enter this hall, where they have been standing during the whole of this session, supplicating us to stay our hand. There is one plain path of honor, and it is the path of safety, because it is the path of duty. Retrace your steps. Acknowledge your treaties. Confess your obligations. Redeem your faith. Execute your laws. Let the President revise his opinions. It is never too late to be just. Let him extend his hand to them as a brother—as their great father indeed. The power of the government is at his command. Let him set them free. Above all things, win back their confidence.

Convince them that they may trust you again as friends. If you will do this, and they are free to act without any coercion, I am ready to execute any treaty which they will make with you. But it must be done "*peaceably*"—in the true spirit of our obligations to Georgia, and in no other way. I wish they were in a condition to treat with us fairly. I wish it for the sake of Georgia, for them, and for ourselves. But I will not consent that government shall operate on their fears. It is unmanly and dishonorable. I will not agree to inculcate on their minds the slightest suggestion that they are not to be protected fully, fearlessly, and faithfully. They are now shrinking under the terror of the calamities, which they believe await them when this bill shall have passed. They believe that the laws of the States are not to be extended over them for good. It is immaterial whether they are right or not in this belief. They believe it to be for evil, and anarchy is now there in its worst forms. I have too much confidence in Georgia to believe that she will suffer any violence to be committed under her authority. But the effect produced by her laws has not left these people free agents. These States have no right to ask us to act under such circumstances, or, if they do, we ought to judge of that for ourselves, and refuse to act, if we think the honor of the government forbids it. Heal the wounds which you have inflicted, and convene their councils. If they will then treat with you, bring your treaty here instead of this law. We shall then know what we are doing. I will then sustain the Executive, by my humble vote, in all that he shall promise in our name. He shall have countless millions to fulfil our faith. The treasures of the nation shall flow like water, and the people of this country will bear any burden, rather than suffer the honor of their government to be stained with perfidy. But for coercion, or any thing like coercion, moral or physical, direct or indirect, I will vote nothing—not one poor scruple. I will take no responsibility that may involve the country in that taint upon our reputation, nor be accessory to it. No pride of opinion should influence us. There are no laurels to be won in this field. There is no victory to achieve over a people in their situation. There is no reward before us but disgrace and the detestation of our fellow men.

If this bill passes, they will submit to all the injuries which may be inflicted upon them, for it is no longer in their power to resist. They will bear it as long as men can bear oppression, but they will sink under it at last. If we were in their situation, we should not leave our own country willingly. We, who are strong and proud, and restive of restraint, should fly to arms for half what they have suffered already. We have done it, but we had friends to sustain us. The Indian must submit. When we have turned him away from our door, he has no friends any where. Shall we, who boast so much of our institutions, and talk so loftily of patriotism, reproach him because he loves his country too well? because his heart is not as flinty as we would make it? because he lingers too long among the graves of his fathers? But, Sir, if the fiat is pronounced here, he will go. He must go, for he can

not stay there and live. They will leave the fields which they have reclaimed from the forest, and laid open to the sun—their comfortable dwellings—their flocks—their schools—their churches—ay, Sir, their Christian churches, which we have built there, and which now stand where the stake of the victim was once planted. But they will not leave the graves of their fathers. A whole nation, in despair, will piously gather up their bones, and retire to your western forests. When they shall have reached its nether skirts, they will look back for the last time from the mountain over this beautiful land of their fathers, and then, retiring to the deeper shades within, will curse your perfidy, and teach their children to execrate your name. We could bear reproach from the proud and the insolent, but there is eloquence in the humility with which these people plead their wrongs. We feel our guilt in the very submissiveness with which they approach us.

I have viewed this question in all the lights which have offered themselves to my mind, and I can see no way to dispose of it safely but to stop where we are—to go no further—but to retract openly, honorably, and immediately. Every step we advance in this injustice will sink us deeper in disgrace. But, Sir, to reject this measure is not enough. We cannot regain what we have already lost, unless our laws are executed. We cannot leave our seats here, and do this ourselves. Without the co-operation of the Executive, we are powerless; and if he will not pause—if he will not execute the treaties—if the laws are suffered to sleep—if reason and justice are slighted, and expostulation is in vain—if his oath will not awaken him to stretch forth his arm fearlessly and honorably to sustain the Constitution and laws of the country, and the rights of these oppressed people—he shall go on upon his own responsibility, and that of those who may be about to place this measure in his hand. Be the consequences what they may, the stain of whatever may happen shall be upon his hands.

My poor opinion in this matter may be worth very little here, and I may be mistaken in my apprehensions. I will leave this to time and those who come after us. But, holding the opinions I do, I will take no share of the responsibility of carrying this measure through the House. On a subject as momentous as this, it is better for us, and more just to our constituents, that we should postpone this measure, and let the question be fairly and fully presented to them before we act upon it finally. They have a right to demand it of us. Let the feeling and judgment of the country be consulted. When this bill has passed, the whole matter is beyond our reach and theirs. The memorials on your table ought not to be lightly trifled with, and will not be safely despised. This thing is not to be done here in a corner, without responsibility. It will be stripped of all the mysteries and vain disguise in which we may hope to conceal its real character, and be put to the severest scrutiny. Surely, Sir, we must wish that we felt confident of that enlightened support in public opinion, without which we cannot be, and shall not find ourselves sustained before the country.

We may differ on points which affect our internal policy only, without responsibility to others. But our conduct in this affects the security of the social law of all mankind, and which all nations are interested to sustain. They have the right to sit in judgment upon us. That part of the law of nations which commands the observance of treaties, is the law of the whole human family. Though the present measure may not immediately affect other civilized nations, and they may have no right to interfere, yet they have the right, for their own security, to put in action the moral feeling of the world against the effect of our example. Whatever our opinions may be of the invasion of France, as a question of original interference, the powers of Europe were fully justified in the measures which they took in 1815, on the return of Buonaparte from Elba. As the violator of treaties, he had placed himself out of all civil and social relations. There was no security for any government, if so dangerous an example, by such a formidable power, should have been able to sustain itself. I have nothing to say of the subsequent disposition of his person. It does not concern the question before us. But the opinion of mankind sustained his expulsion from France, if not from Europe, and history will sanction it. The eye of other nations is now fixed upon us. Our friends are looking with fearful anxiety to our conduct in this matter. Our enemies, too, are watching our steps. They have lain in wait for us for half a century, and the passage of this bill will light up joy and hope in the palace of every despot. It will do more to destroy the confidence of the world in free government, than all their armies could accomplish. Our friends every where will be compelled to hang their heads, and submit to this reproach of their principles. It will weaken our institutions at home, and infect the heart of our social system. It will teach our people to hold the honor of their government lightly, and loosen the moral feeling of the country. Republics have been charged, too, with insolence and oppression in the day of their power. History has unfortunately given us much proof of its truth, and we are about to confirm it by our own example. But, Sir, we must stand at last at the bar of posterity, and answer there for ourselves and our country. If we look for party influence to sustain us now, it will fail us there. The little bickerings, in which we now bustle and show off our importance, will have then ceased and been forgotten, or little understood. There will be no time-serving purposes to warp the judgment—no temptations to entice into error—no adulation to offer unto power, or to win the favor of the great—no ambition to be exalted, and no venal press to shelter wrong, to misrepresent the truth, or calumniate the motives of those who now forewarn you of your responsibility. The weight of a name will not sustain you there, and no tide of popularity will carry you along triumphantly. Our country will be brought by the historian—*custodia fidelis rerum*—to that standard of universal morality, which will guide the judgment and fix the sentence of posterity. It will be pronounced by the impartial judgment of mankind, and stand forever irreversible. The

character of this measure will then be known as it is. The full and clear light of truth will break in upon it, and it will stand out in history in bold relief. The witnesses who will then speak will be those illustrious men who have not lived to see this day. Your history, your treaties, and your statutes, will confront you. The human heart will be consulted—the moral sense of all mankind will speak out fearlessly, and you will stand condemned by the law of God, as well as the sentence of your fellow men. You may not live to hear it, but there will be no refuge for you in the grave. You will yet live in history; and, if your children do not disown their fathers, they must bear the humiliating reproaches of their name. Nor will this transaction be put down in history as a party measure. Our country, too, must bear the crime and the shame. I have been a party man, Sir—perhaps too much so—and I have contributed nothing to place the present Chief Magistrate in the station which he now holds—as yet *under* the Constitution, and not *above* it. But I should deem it a lesser evil and a more supportable calamity—and I declare to you, that I had rather see him, or any other man, created dictator at once, and let him sway our destinies for one life at least, than suffer for a single hour the shame of feeling that my country must submit, before the Christian world, to the disgrace of being set down in history as the violator of her treaties, and the oppressor of this helpless people, who have trusted so confidingly to her faith.

But I will not despond, or give up all for lost. When it is considered how little, after all, these States really have at stake on this question, and how trifling the acquisition of this paltry territory must be, I cannot believe that they will refuse to make some sacrifice, or concession of feeling, to the reputation of the country. Are not our honor and our reputation, our interests and our glory, theirs? Are they not bound up with us in one common lot, for good or evil, as long as this Constitution and our Union shall endure, and until the blessings, which, under the goodness of Providence, it may long dispense to our common country, shall be forever withdrawn?—until that appalling night of despotism shall descend upon the world, and lower upon the whole family of man, when this bright constellation shall have set, and the last hope of human freedom shall have been forever extinguished? What are these miserable remnants of Indian land worth to them or to us, if, in settling an abstract question of jurisdiction, we are about to expose ourselves and them to the imputation of bad faith? New York, Pennsylvania, Virginia and Ohio, have all yielded to the constitutional authority of the Union, on points quite as essential, in their opinion, to their sovereignty as this. There is nothing to be won in this controversy that is worth a moment's thought, in comparison with the condemnation that lies beyond it. To avert such a calamity, I will yield much—very much. I will give up almost any thing here. I will claim nothing of these States that shall offend their pride. The point of honor shall be conceded to them, and our good faith shall be vindicated by a concession from their patriotism. I will not yet give up even this hope. Nor will I believe that the Chief Magistrate will suffer the

reputation of his administration and the country to be tarnished. I will look there, too, for better counsels, and a more deliberate examination of the ground on which he has placed himself. Whether we favored his elevation to his present station or not, we may all unite in wishing that he may leave it with a solid reputation, and that he may advance the honor of his country beyond even the hopes of his friends. We are all interested in his fame, for it is now identified with his country. There are nobler examples for his emulation than Spain or Carthage. Let him vindicate the public faith of his country, and he shall be hailed indeed as her Saviour, for he will have preserved her honor. Let him instruct the world that the sanctity of treaties is no longer the scorn of republics, and he shall then have truly filled the measure of his country's glory and his own. Her history beams with light upon the path of honor and honest fame. There are bright examples before him which any man may be proud to follow and to emulate; but the enduring glory of his predecessors has been won by their inflexible justice and public virtue. "*Ex omnibus præmiis* virtutis, *amplissimum esse præmium, gloriam; esse hanc unam, quæ brevitatem vitæ posteritatis memoria consoleretur; quæ efficerit ut absentes adessemus, mortui viveremus; hanc denique esse, cujus gradibus etiam homines in cœlum viderentur ascendere.*"

NOTES.

P. 80. Mr. Storrs speaks of the Indians within the States as being 60,000 in number. He doubtless meant the Southern States. The Secretary of War estimates the number in these States to be 75,000. There are probably more than 100,000 east of the Mississippi, and twice as many west of that river, whose condition may be directly or indirectly affected by the Indian bill.

P. 88. Mr. Storrs states, that 12,000,000 of acres have been purchased by the U. S. for the use of Georgia, since the compact of 1802, and in compliance with that compact. The quantity is much larger than his estimate.

By a report of Mr. Calhoun, when Secretary of War, in 1824, the government of the U. S. had then obtained for the use of Georgia,

From the Creeks,	14,748,690
From the Cherokees,	1,095,310
	15,844,000
From the Creeks, since 1824, all their remaining lands in Georgia,	4,083,200
Acres,	19,927,200

Great tracts of country have been ceded to the United States by the Cherokees, upon which are now established the most populous and flourishing communities of Tennessee and Alabama. Georgia claims about 5,000,000 acres of Cherokee land, as now remaining in the possession of the Cherokees.

SPEECH

OF THE

HON. WILLIAM W. ELLSWORTH,

REPRESENTATIVE FROM CONNECTICUT,

DELIVERED IN THE HOUSE OF REPRESENTATIVES, SITTING AS IN COMMITTEE OF THE WHOLE, ON THE BILL FOR THE REMOVAL OF THE INDIANS, MONDAY, MAY 17, 1830.

Mr. Chairman: I would most cheerfully acquiesce in the proposed appropriation to assist the Indians in their removal, could I believe that this object would be effected in good faith, and according to the unbiased wishes of the Indians. But I do not believe such will be the fact. Whatever gentlemen may say and feel in this house, in the honest expression of their views, I have no doubt that mercenary motives, in some of the southern and south-western portions of the country have had, and still have, an important influence upon this measure. It is advocated upon principles at war with our policy towards the Indians; upon principles which no State in this Union can expect this government to recognise or sanction. By the compact of 1802 with the State of Georgia, we agreed to extinguish the Indian title to her lands as soon as it could be done "on reasonable terms, and peaceably." I should be glad to unite in any proper measures, as being an amicable and honorable mode of settling questions of grave consideration now urged upon us, and as meeting the wishes of several of the States, who feel their rights, dignity, and welfare, to be involved in the issue. Certainly I shall strive to be faithful to every just expectation of a State; but we must not be faithless to our engagements. Sir, I have no belief that the bill will bring along with it the proposed and desirable effect; and, while I am ready to go as far as any gentleman to assist in an honorable removal of the Indians, I cannot do it under circumstances which admonish me that this bill is but a part of a united effort virtually to expel the Indians from their ancient possessions. Some of these circumstances I will lay before the committee. No option is left with the Indians as to their removal, if you pass this bill, consistent with their heretofore acknowledged rights, and such as the faith and honor of this country ought to secure to them.

Before I mention these circumstances, permit me to call the attention of the committee to the true question in debate. This bill proposes a scheme for the removal of all the Indian tribes on the east of the Mississippi to the western wilderness.

The sum now to be appropriated, it is admitted, is for a beginning only. None suppose the whole expense will fall short of three millions, and many think it will be more than quadruple that sum. What is the character of this grand scheme? Upon what principles is it urged upon us? It becomes us to examine it narrowly. If it is to operate coercively upon the Indians; if bribery, corruption and menace are about to make it effectual, as I verily believe will be the fact, we cannot give the funds of this nation to assist in its accomplishment. The question is not so exactly what is the relation between the States and the Indian tribes, as what is the relation of this government to them. It is not so material what notions Georgia entertains about the original rights of the Indians. She may deny them all, if she pleases, and her advocates may contend that it is now too late to inquire into their rights, as distinct and independent; but since we are called upon to accomplish their removal, it is our duty to see that the principles which have hitherto regulated our relations with the Indians are not denied or abandoned. This nation has settled the character of the Indian tribes—it is too late for her to speculate, if she would, on this subject. The whole history of our Indian department, the scores of treaties we have made, and the intercourse law of 1790, and now existing as passed in 1802, establish the great fact, that this government has held these tribes to be distinct from the States for all national purposes; nor can we now deny it, without the most manifest injustice to the Indians, and the most glaring disregard of our solemn engagements. Let others have such systems as they please—we have one established by the practice of every successive year, resting on the eternal principles of justice, and wrought into all our laws on this subject. And, Sir, even if we could not properly have taken the ground which we did at first, and have since maintained, we cannot now deny it, and appropriate our funds, and lend our national arm, to subvert it. We are committed. We have invited the Indians to treat with us—to trust us—to put themselves into our hands—and now, can we betray them? Can we advance money to carry into effect a system at war with our treaties and our solemn pledges? This is the ground. And, though I shall investigate first principles a little, I do contend the friends of the Indians need not go beyond the statutes and records of our own government to learn the line of duty.

The advocates of removal tell us we cannot interfere with the internal concerns of a sovereign State. The gentlemen from Georgia admonish us, that that State has taken her course, and nothing will divert her; that she is sovereign, and will do as she pleases; and they advise us to let her alone. Sir, the difficulty is, she will not let *us* alone. She says, Give us your money; pledge the national treasury to remove the Indians within our borders: and all this she demands of us, by trampling under foot the charters of our plighted faith, and changing completely the principles of our relations with the Indians. She asks too much. She asks what honesty require

us to withhold. I will never give her a farthing upon the principles she assumes—nor can this government, without exciting the just indignation of this nation and of mankind.

I will now mention some of the circumstances which show the character and object of this bill.

First, then, the executive, whose opinion and future course of conduct on this subject, it seems, were well known before his election, applauds Georgia for her great forbearance towards the Indians, and denies their right of self-government and of soil, except to such a portion as they may happen to be in the actual occupation and enjoyment of.

Next, the secretary of war, in his official communications, labors to prove that they have no rights at all, not even to any portion of the soil; for he asserts they have lost all, and the States have acquired all, by conquest and discovery; and such has of late become the language of Georgia. She openly declared, by her legislature, in 1827, "that the State might properly take possession of the Cherokee country by force, and that it was owing to her moderation and forbearance that she did not thus take possession." Previous to this declaration, a joint committee of the legislature had made a report, in which they say, that the European nations asserted successfully the right of occupying such parts of America as each discovered; and thereby they established their supreme command over it. Again—"It may be contended, with much plausibility, that there is in these claims more of force than of justice; but they are claims which have been recognised and admitted by the whole civilized world; and it is unquestionably true, that, under such circumstances, force becomes right. Before Georgia became a party to the articles of agreement and cession, (the compact of 1802,) she could rightfully have possessed herself of those lands, either by negotiation with the Indians, or by force; and she had determined, in one of the two ways, to do so; but by this contract she made it the duty of the United States to sustain the expense of obtaining for her the possession, provided it could be done upon reasonable terms, and by negotiation; but in case it should be necessary to resort to force, this contract with the United States makes no provision: the consequence is, that Georgia is left untrammelled, and at full liberty to prosecute her rights, in that point of view, according to her discretion, and as though no such contract had been made." Truly this is logic with a vengeance. And we are called upon to sanction these abominable doctrines. They lie, avowedly, at the basis of this fearful measure. May the national council pause upon the brink of this precipice, before every thing is lost in the chasm below.

Another circumstance of admonition is, that an honorable committee of this house have openly declared, in their report made to sustain this bill, that the Indians are mere tenants at will, strictly having no rights to territory or self-government; and that the red men lie at the mercy of the whites, by reason of discovery, conquest, civilization, greater knowledge and pow-

er, or Christianity. This is their language on page 5th: "But in all the acts, first of the colonies, and afterwards of the States, the fundamental principle, that the Indians had no rights by virtue of their ancient possession, either of soil or sovereignty, has never been abandoned either expressly or by implication." So again: "No respectable jurist has ever gravely contended that the right of the Indians to hold their reserved lands could be supported in the courts of the country upon any other ground than the grant or permission of the sovereignty or State in which such lands lie." This report goes farther than I had supposed intelligent men could go. It really leaves nothing to the Indian. The very soil on which he lives, and where his ancestors lived before him, is none of his, but belongs to the white man.

Nor am I less alarmed to see it so seriously asserted by the committee, that all our Indian treaties are a mere legislative proceeding, and, as such, alterable at our pleasure. And I am by no means certain that the committee do not mean to say, that our treaties and legislative enactments, as far as they rest on any rights of the Indians, are unconstitutional and void. Page 8th, I read: "These treaties were but a mode of government, and a substitute for ordinary legislation, which were from time to time dispensed with, in regard to those tribes which continued in any of the colonies or States until they became enclosed by the white population." If these treaties are not binding to their full extent, then the great men who established the government, and for years administered it—all the Presidents of this Union, and their associates, including, too, our present chief magistrate—have been in error, and made treaties and laws without right and against right.

I have a further reason for fearing the Indians are to be expelled. While such sentiments are entertained in the cabinet, certain States, for the first time, and just at this crisis, put the finishing stroke to this grand scheme of removal. They deliberately pass laws annihilating the independent existence of the tribes—abrogating all their customs, decrees, rules and obligations—excluding the superintendence of Congress—opening the whole country of the Indians to the whites, and, in short, taking from them their own government, and excluding them from a participation in any other; and all this upon a claim of right, while the single object is to coerce their removal.

Now, sir, when I find such sentiments prevailing in certain States, and in the cabinet, and that the same are urged upon us by the committee, to induce the house to pass this bill, I am alarmed for the poor and helpless Indian. I feel that power is arrayed against right; and that the voluntary, unbiased expression of the Indians, as to their removal, is not likely to be had.

Besides, sir, we have the protest of the Indians reiterated upon us. They do not wish to remove. For years have we been laboring to induce them to remove—have made them liberal offers—urged them to go and see the promised land tendered to them; but it is all in vain. Like others, they prefer to live and die where their fathers lived and died, and refuse absolutely to

remove. And, to make the last and final attempt, this great and mighty government has insidiously sent in its agents, generals Coffee and Carroll, secretly as their friends, to advise them—"to try the chiefs alone"—"to move upon them in the line of their prejudices, and to give them rewards." The letters of instruction to these agents of government we have on our tables. They are a stain upon our national character. These fruitless attempts to induce the Indians to go, prove, beyond all question, that they never will remove, if left to act their own pleasure.

I cannot help believing that much is meant by this bill of appropriations. The Indians will feel that they must go, or be abandoned to their fate; and the world will justify that feeling. They must and they will go.

While the Indians are thus abandoned by the U. States, pressed by the States in which they live, and denied all right of territory and self-government, let us not delude ourselves with talking about their voluntary and cheerful removal, but rather let us meet the matter fairly, and make out the position, that this nation, or the individual States of it, have a right, before God and man, to send the Indians even to the Pacific ocean, if they be in the way of our growth and expansion.

Let me now ask the attention of the committee to the great questions—What are the rights of the Indians, and what is our duty to them?

It is not at all improbable that we shall answer these questions differently from what the Indians would. We may adopt a course of reasoning which they would deny, and one which we might perhaps see differently if the Indians were the stronger party. But I trust that we shall not forget that truth and justice are always the same, and that towards the Indians we ought to act upon the most noble, generous, and humane principles.

The Indians declare to us, they are to be sacrificed to the mercenary views of the whites. They come in a body of some thousands, imploring our interposition. They recite our treaties, in which they have given themselves into our arms for protection, and in which we have most solemnly received them, and pledged ourselves to protect them from every power whatever. Sir, it is becoming in us to look at this matter fairly and fully, and see where duty lies.

What, then, I ask, are the rights of the Indians? I maintain that the complainants have the right of territory and self-government, and that these have ever been accorded to them by the United States.

Suppose, sir, we were now, for the first time, to learn that there was a tribe of Indians in Georgia, the Cherokees, and that, discovering them, we should learn they had lived upon their present territory, and their ancestors before them, from a period beyond all memory or history. Suppose we should find them to be owners of a tract of land containing 8,000,000 of acres—possessing a government of laws, a public treasury, schools and religious institutions, and made up, to a great extent, of farmers and mechanics, advancing in knowledge, wealth, virtue, and

power. Suppose all this, (and I do not speak of an imaginary people,) what should we say of their rights as a nation? We could not possibly differ. Writers on the law of nature and of nations, politicians and moralists of every school and every age, would agree that they had the most perfect and absolute right to territory and government. And let me stop here to remark that the Indian right to territory is no better than his right to government. Every consideration can be urged in favor of one right that can be urged in favor of the other. They must stand or fall together. I do not deny that the right of soil and jurisdiction may be divided. But they are not in this case. If the Indian tribes have a right to live upon their possessions, they have a right to live there as they please, provided they do not annoy us.

Now, I ask gentlemen if the rights supposed are not really the present rights of the Indians? Here they are; here they ever have been; and here they are in the condition in which I have supposed. In 1826, the Cherokees were the owners of 2,943 ploughs, 172 wagons, 2,500 sheep, 7,600 horses, 22,000 cattle, 46,000 swine. Have they done any thing to forfeit their rights? If so, when? how? by what act? by what event? True we have gathered round them, while they have been receding to their present narrow limits, and advancing to their present condition of knowledge and improvement; (and had they not a right so to advance?) When we have taken their lands, we have purchased them, and marked distinctly the boundaries of what we left. Now, I again ask gentlemen when the Indians lost their rights? The whites may have made maps and charts, and drawn lines; but what have the Indians done?—They are the creatures of the same God with ourselves. He has made them, and placed them where they are. He it was who gave them their land to dwell in. Sir, I declare there is no right in us to take it or their government from them. Power may do it, but the God of heaven will not sanction it. Self-defence does not require it; nor does discovery, conquest, civilization or Christianity warrant it.

Let us look for a moment at these several grounds of title. What, sir, is the right of discovery? This right is often spoken of by those who are adverse to the claims of the Indians. Among the nations of Europe, it seems to be a principle of the law of nations, that, if the subjects of any king discover and enter upon new and unknown lands, they become a part of the dominions of that king. There is much that is arbitrary and fanciful about this right. But, be it reasonable or unreasonable, it is a mere political arrangement among nations, established to regulate their own conduct among themselves, and has nothing to do with the prior possessors of the land. I can hardly conceive how sailing along our coast for a few miles, should, in the first instance, have given a right to North America. But be it that it does; how are the Indians affected by that consideration? Suppose even the rights of the Indians ought, upon general principles, to be limited and restricted by the settlements of

civilized and Christian people; will any contend that the Cherokees, for instance, ought to be driven into narrower limits than their present possessions? If, because we are enlightened and civilized, by discovering this country we have acquired a right to drive off the Indians, or wrest from them their government, (which I consider the same thing,) then we may, if it becomes necessary, in order to secure our further advancement in knowledge and virtue, drive them into the western ocean, or even put them to death. Certainly nothing of this kind is necessary. Indeed, I believe the Indians, by being established on the west side of the Mississippi, will become a greater obstacle to our national growth and prosperity, than if left as they now are. Not 25 years will pass before the Indian, on those rich lands, will be in some white man's way.

It may be true that the European nations, the English, French, Spanish and Portuguese, have partitioned this continent upon the principle of title by first discovery and possession. But in doing this, they had infinite difficulty and wars; nor did they then do it with reference to the Indians, but only to govern their own conduct, and to avoid further collision and war. Has it not been the established principle of this government to recognise the Indian title? Has it ever taken their land, upon this title by discovery, without their consent, for an agreed consideration? Sir, do we not every year acknowledge their title, by making treaties with them, and paying annuities? We pay, I think, more than $200,000 annually to the Indians in annuities. How can we, the United States, deny a right which we have recognised, aye, guarantied, thousands of times? We are estopped. We are convicted by our own conduct from the very beginning. The history of our government will rise up in judgment against us. Sir, the Indians should find by experience, that we are honest and faithful to our engagements, and that we are not about to change our whole course of intercourse with them. They know nothing about this European notion of title by first discovery. They have always occupied their present possessions. The Indian finds that the great Being who made him has given him a place on the earth, and he argues that some reasonable portion of it, on which he was born, and has ever lived, must be his, and that that portion of it cannot be wrested from him by another's casting his eye or placing his foot upon it.

Thus much for the right of discovery.

As to the right of conquest, I imagine even less can be said. Victory and captivity subject the vanquished and his property to the pleasure of the victor. But then the right of claiming the country of another nation, and of exercising government over it, depends upon the fact of a victorious conflict—taking possession as conquerors, instituting a government as such, and driving out the enemy or receiving him as a dependent subject. But none of all this, surely, is true of these southern tribes. All the wars between them and us have terminated in formal treaties, leaving them in possession of their territory, distinctly acknowledging their independent existence, and guarantying to

them their possessions. Treaties to this effect are numerous, and I trust, too familiar to this house to need to be read. Besides, so far as the Indians have lost their country by conquest, the United States have acquired it, and not the States. The States have never conquered their country, or taken possession of it, or abolished their laws, and instituted a government of their own. The wars have been conducted by the nation; but she has acknowledged their independence in the numerous treaties of peace already mentioned. Nor has she ever taken any thing from them, not even a right of passage through their territory, without their consent and an equivalent. It is forever too late to talk of conquest. Great Britain has not more fully acknowledged our independence than have we that of the Indians. With the Cherokees we have made sixteen treaties. They all begin and end with this sentiment. And even if these treaties were made without authority, (which I by no means admit,) they negate all right or claim by conquest. Before the union of these States, Georgia herself, by more than one treaty, most fully acknowledged the rights of the Indians. It is enough that she never did take the attitude of a conqueror. [See the treaty made at Dewitt's Corner, in 1777.]

If, then, Georgia and the other States have no right, directly or indirectly, to expel these Indians—no right to their government or their territory by discovery, or conquest, or civilization, or Christianity, when and where have they this right at all? True, they may not wish to have the Indians within their limits; but who put them there? God. How long have they been there? Always. Nor is it their fault that the whites have gathered around them, or that it so happens that they fall within the chartered limits of a State. This is no act of theirs, whereby they forfeit their rights; nor do they admit, nor have they at any time, that they are not independent and sovereign. They have granted no charters, and drawn no lines, except as they have sold to the whites.

I have thus far considered what are the rights of these Indians, independent of treaties and legislation, on our part; but I will now call the attention of the committee to the political condition in which this government has considered them to stand, and I affirm we shall find every thing to confirm the opinion already advanced. No position is susceptible of better proof.

From the first union among the States, our relations with the Indian tribes have been conducted by the national government. As our defence in case of war with them required the general arm and common funds, the nation was interested to superintend all intercourse with them—in order to avoid the causes of war, as well as to save the Indians from the intrigues of individuals, and from alliances with foreign powers. These Indians were likewise very formidable and dangerous. Under the Old Congress and the Confederation, all our intercourse with the Indians was in our national character. As such, we made treaties with them, offensive and defensive, induced them to forego all connexion with other nations, and to commit themselves and their concerns into our hands. As a nation, too, from the first, this government has admitted their independent existence, and their full right to the soil.

We have never usurped their rights, but have maintained a friendly connexion with them, and purchased their lands when we wanted them and they would sell.

In 1785, we made our first treaty with the Cherokees. In the treaty we agreed that they should have a delegate in Congress. The treaty begins thus: "The Commissioners Plenipotentiary of the United States of America, in Congress assembled, give peace to all the Cherokees, and receive them into the favor and protection of the United States of America, on the following conditions:"

Art. 3. The said Indians, for themselves and their respective tribes and towns, do acknowledge all the Cherokees to be under the protection of the United States of America, and of no other sovereign whatever.

Art. 9. For the benefit and comfort of the Indians, and for the prevention of injuries or oppressions on the part of the citizens or Indians, the United States, in Congress assembled, shall have the sole and exclusive right of regulating the trade with the Indians, and managing all their affairs in such manner as they think proper.

Art. 12. That the Indians may have full confidence in the justice of the United States respecting their interests, they shall have a right to send a deputy of their choice, whenever they think fit, to Congress.

Art. 13. The hatchet shall be forever buried; and the peace given by the United States, and friendship re-established between the said States, on the one part, and all the Cherokees on the other, shall be universal: and the contracting parties shall use their utmost endeavors to maintain the peace given as aforesaid and friendship re established.

The same provisions and mutual stipulations are to be found in the treaty of Holston, made in the year 1791, and so in the subsequent treaties down to the present day.

Can we need other evidence that our relation to the Indians has been national, exclusively, from the first? The States and individuals have been prohibited the purchase of Indian land. All our dealing with the Indian tribes bears but one interpretation—that of two distinct parties treating in their national character.

Sir, at the time when these States established the present government, how did they find these Indian tribes, and our relations with them?

They found—

1st. Treaties of friendship and alliance existing between them and us, containing reciprocal obligations and guaranties.

2d. They found their national domain marked out and defined.

3d. They found them nations in claim, in enjoyment, and right, acknowledging no dependence *except such as was defined by treaty, and such as was perfectly compatible with retaining the right of territory and government.*

4th. They found that, under existing treaties, the United States had excluded the whites from the Indian territory, and had regulated all trade and intercourse with them, as it is now done. The Ohio river was made to divide them into two departments, the

north and the south. Before 1787, there had been three departments. The Old Congress, in 1787, appropriated $34,000 for the purpose of making treaties with the Indians.

In this state of things, the present government was formed; and to it is given the power of regulating commerce with foreign nations, between the States, and with the Indian tribes; the restriction in the eighth article of the confederation being omitted.

In 1790, the second session of the first Congress, this power was carried into effect, by first appropriating $20,000 to make treaties. And in the same session they passed the act to regulate trade and intercourse with the Indian tribes, which expired in 1793, and has been renewed from time to time, until, in 1802, it was permanently enacted, substantially as it now is. The treaties with the Cherokees, and the provisions of the intercourse law of 1802, all now in force, are substantially the same. I ask the attention of the committee to them very particularly, for I hold them to be indubitable evidence of the national character in which we acted, utterly inconsistent with the assumed jurisdiction of Georgia, and such as imperiously demand of us to resist the claim of Georgia, or abandon our treaties and our laws.

1st. The boundaries of the Indian country are expressly, by treaty and legislative enactment, recognised and established, and the President is directed to ascertain them.

2d. By treaty and legislative enactment, the Indians cannot sell any of their lands to third persons or foreign States.

3d. By act of Congress, no person can enter the Indian territory to trade, without license, and giving bond of $1000, with surety; nor can a foreigner ever obtain license at all.

4th. No person shall settle in the Indian territory, nor shall survey or mark out the same; and if any one does, the President may remove him by military force.

5th. No person shall purchase of the Indians clothing, guns, or implements of husbandry.

6th. Every white man found over the line, may be seized by military force, and carried into any one of three adjoining States, and tried.

7th. So he may be seized and tried wherever he may be found.

8th. All crimes committed by Indians against whites shall be tried in the United States courts.

9th. The tribes first, and government finally, are liable for all depredations by the Indians, demand being first made on the superintendent.

10th. Indian agents are located among the tribes, and they only can designate places of trade.

11th. The President may regulate and forbid the sale of spirituous liquor among the Indians.

12th. The President may cause them to be furnished with domestic animals and implements of husbandry, and with goods and money.

13th. To prevent their further decline, the President may appoint persons to instruct them in agriculture and knowledge, and the sum of $10,000 is appropriated annually therefor.

Now, Georgia has assumed the entire civil and criminal jurisdiction over all this Indian territory within her limits, as have Alabama and Mississippi; and they claim that, let their laws be what they may, the United States cannot interpose; no, not if they pass a law to put every man of them to death. These States have driven the United States out of their State limits, and now deny their right, by treaty or legislation, to interfere in the internal and domestic concerns of the Indians. At one blow our treaties and laws fall to the ground. And we are to sanction and sustain these measures by appropriating the funds of the government! I ask this house to consider the character of the laws of Georgia, and say if they are willing to aid in the execution of her designs.

But, sir, aside from the injustice, upon general principles, of removing the Indians, I ask if this government is not bound by treaties to protect them against every body.

Congress, under the power of the Constitution, has repeatedly entered into compact with the Indians.

1st. It has made appropriations beforehand, to enable the President to make treaties. It did this at the first session, appropriating $20,000. It has done it every year since; and most of the treaties we expressly enumerated and approved in the act of 1826. The treaty for the removal of the Creeks was made by the President, but is, I trust, binding on the country.

But, sir, if Congress had not expressly directed the President to make treaties, and had not ratified his acts after they were done, he has the power given him in the Constitution. We have been making treaties with the Indians from the first. We know that Washington, Adams, and every President since, have acted upon the idea that this government possessed the power. By virtue of these treaties, we have obtained the country of the Indians—that which we never claimed as ours—and for it we have stipulated to pay annuities. Are all these things mere waste paper? Can this government say we have no power to treat, while we are constantly doing it, and now hold much of their land under treaties?

But, sir, let us not forget, that, by treating with the Indians, we have induced them to throw themselves into our arms, and to commit themselves to us. Take, as a just illustration of this sentiment, the first treaty of the Indians under the Constitution. They abjure every other power, State, and individuals; commit their country and their affairs to the United States, exclusively, and with us enter into treaties of alliance, offensive and defensive. So, too, we receive them; guaranty their country; define and bound it; receive a part of it ourselves; and, by legislative enactments, regulate their trade, and exclude all persons from their territory, and send them implements for the purposes of husbandry. Can we now say we have no power, and cannot redeem our pledge. I hope this government will not stoop to such infamy and perfidy.

In 1819, Congress passed a law to appropriate $10,000 annually, to co-operate with benevolent societies in civilizing and reclaiming the Indians—ay, to co-operate with the "fanatics of the north," as the gentleman from Georgia calls them. The Choc-

taws have appropriated $12,000 for thirty years, annually, and the Chickasaws $30,000—and now, since some of them are beginning to be what we have long labored to make them, we are about to abandon them forever.

If, sir, our treaties or laws are of any force, how can the acts of Georgia, Mississippi, and Alabama stand? One or the other of these powers, only, can extend its jurisdiction over the Indians.

It has been said that the Indians in the Southern States will soon become extinct—that humanity dictates their removal. Sir, why not leave the Indians to judge for themselves in this matter? They have the deepest interest in it, and they are sufficiently intelligent to discover what is best for themselves. Sir, I confess I do not like this parade of humanity. Nor, if there be a willingness on the part of the Indians, would Georgia need to pass her extraordinary laws. But, sir, who constituted us judges over them? We may as well set ourselves up as judges for any other people—for Spain or France, for instance, and force upon them a republican government, if we thought it would be better for them. How comes it to pass that some of the tribes, the Cherokees especially, are increasing in population and wealth? Does this look like their extinction? When did Georgia, permit me to ask, first feel this impulse of humanity for the Cherokees? Not until they began to be a growing tribe. If she wishes to save the Indian, why does she deny him the benefit and protection of her laws? Why does she leave him to the merciless rapacity of his white neighbors?

But it is said the Cherokees and other tribes are willing to remove. What, then, mean these memorials of touching entreaty on our tables, signed by some thousands of them, begging that they may not be forced to leave their country? Why has government sent in among them secret agents to advise them to go? Why have these States passed their unequal and unprotecting laws? Does this look like a wish on the part of the Cherokees to remove? And why, let me ask, have they so long refused the offers made them by the government? But it is said, The chiefs! the chiefs! they are the mischief-makers—they advise the Indians to stay. And has it come to this, that we are to find fault with the poor Indian, because he regards the advice of his chief and guardian? Do not we and other nations the same? Shall we take the ground that the Indians are willing to remove because we, in our humanity, think they ought to be? They, as a nation and as individuals, declare they are not willing to remove; and, among other things, they give, as a reason for their unwillingness, that they have examined and do not like the country beyond the Mississippi—that they cannot be happy and secure there. And may they not judge for themselves?

Sir, there are many considerations pertaining to this great subject, which I must leave to other and abler hands. I will close my remarks with noticing one objection to the Indians remaining and establishing a government where they are. It is said, and it is so declared in the President's message, that it is against the theory and Constitution of our government, that the Indians should have

a distinct existence in the bosom of a State. My answer is, that these southern tribes have always had a government—they are exercising no new power—it is not a new nation, an "*imperium in imperio*" springing up. They have, it is true, within a few years, new modelled their government, in imitation of ours, and infused into it something of our spirit and principles; but they assume no new authority. The whites have established themselves around the Indians, and it is not a new power springing up and planting itself in a sovereign State. The objection takes for granted the whole matter in dispute. If my views are right, the Indians can urge this objection with more force than we can. In most of the States, the Indians have melted away, and thereby lost the power of self-government and distinct existence; but this is not true of the Cherokees and other southern tribes, who have claimed and exercised the power of self-government; and, for aught I see, may do it with as much propriety as ourselves. Sir, I will close with saying, that this emigration of 60,000 Indians, of different tribes, to a new country, now occupied more or less with hostile tribes, is an experiment of such serious magnitude, that we ought not to force it upon them, but leave it really to their free choice. And who, Sir, can tell us of the expense of this removal? We are first to purchase the country they leave; then to remove them; to conquer or purchase the country to be assigned them, and, after this, to sustain and defend them for all future time. How many millions will this cost?

Mr. Chairman, we must be just and faithful to our treaties. We shall not stand justified before the world in taking any step which shall lead to oppression. The eyes of the world, as well as of this nation, are upon us. I conjure this house not to stain the page of our history with national shame, cruelty, and perfidy.

EXTRACTS FROM AN ACT OF GEORGIA, PASSED DEC. 19, 1829, TO EXTEND THE LAWS OF THAT STATE OVER THE TERRITORY OF THE CHEROKEE INDIANS.

Sec. 6. *And be it further enacted*, That all the laws, both civil and criminal, of this State, be, and the same are hereby, extended over said portions of territory, respectively; and all persons whatever, residing within the same, shall, after the first day of June next, be subject and liable to the operation of said laws, in the same manner as other citizens of this State or the citizens of said counties, respectively; and all writs and processes whatever, issued by the courts, or officers of said courts, shall extend over, and operate on, the portions of territory hereby added to the same, respectively.

Sec. 7. *And be it further enacted*, That, after the first day of June next, all laws, ordinances, orders and regulations, of any kind whatever, made, passed or enacted, by the Cherokee Indians, either in general council or in any other way whatever, or by any authority

whatever, of said tribe, be, and the same are hereby declared to be, null and void, and of no effect, as if the same *had never existed;* and, in all cases of indictment, or civil suits, it shall not be lawful for the defendant to justify under any of said laws, ordinances, orders, or regulations; nor shall the courts of this State permit the same to be given in evidence on the trial of any suit whatever.

Sec. 8. *And be it further enacted*, That it shall not be lawful for any person or body of persons, by arbitrary power, or by virtue of any pretended rule, ordinance, law or custom, of said Cherokee nation, to prevent, by threats, menaces, or *other means to endeavor* to prevent, any Indian of said nation, residing within the chartered limits of this State, from enrolling as an emigrant, or actually emigrating, or removing from said nation; nor shall it be lawful for any person or body of persons, by arbitrary power, or by virtue of any pretended rule, ordinance, law or custom, of said nation, to punish in any manner, or to molest either the person or property, or to abridge the rights or privileges of any Indian for enrolling his or her name as an emigrant, or for emigrating, or intending to emigrate, from said nation.

Sec. 9. *And be it further enacted*, That any person or body of persons, offending against the provisions of the foregoing section, shall be guilty of a high misdemeanor, subject to indictment, and, on conviction, shall be punished by confinement in the common gaol of any county of this State, or by confinement at hard labor in the penitentiary, for a term not exceeding *four years*, at the discretion of the court.

Sec. 10. *And be it further enacted*, That it shall not be lawful for any person or body of persons, by arbitrary power, or under color of any pretended *rule*, *ordinance*, law, *or custom*, of said *nation*, to *prevent*, or *offer* to prevent, or *deter* any *Indian*, head man, chief, or warrior, of said nation, residing within the chartered limits of this State, *from selling or ceding* to the United States, for *the use of the State of Georgia*, the whole or any part of said territory, or to *prevent*, or offer to *prevent*, any Indian, head man, chief, or warrior, of said nation, residing as aforesaid, *from meeting* in council, *or treaty*, any commissioner or commissioners on the part of the United States, *for any purpose whatever*.

Sec. 11. *And be it further enacted*, That any person or body of persons, offending against the provisions of the foregoing section, shall be guilty of a high misdemeanor, subject to indictment, and, on conviction, shall be confined at hard labor in the penitentiary, for not less than four, nor longer than six years, at the discretion of the court

SPEECH

OF THE

HON. GEORGE EVANS,

REPRESENTATIVE FROM MAINE,

DELIVERED IN THE HOUSE OF REPRESENTATIVES, SITTING AS IN COMMITTEE OF THE WHOLE, ON THE BILL FOR REMOVING THE INDIANS, TUESDAY, MAY 18, 1830.

MR. CHAIRMAN: The object of the bill under consideration has been fully stated by the chairman of the committee on Indian affairs, (Mr. Bell,) and by the gentlemen from Georgia, (Messrs. Lumpkin and Foster,) who have preceded me in this debate. It proposes, as they have correctly said, an appropriation of money to be expended by the President, in effecting the removal of the Indians now residing within the limits of the States and Territories, to a new residence west of the Mississippi. We have been told, that this has long been the settled policy of the government; and gentlemen express much surprise that any opposition should now exist, to the accomplishment of an object so often sought, and represented as highly desirable. Sir, if this has been the settled policy of the government, which I shall not now stop to consider, there has been also another policy, another practice, pursued towards the Indian tribes, which Providence has cast upon our care, that seems, at the present juncture, to be wholly forgotten. It is this —in all our relations with them, to respect their rights of soil and of jurisdiction—to treat with them as free and sovereign communities. We have uniformly acknowledged the binding force of our engagements with them, and we have promised that we would be faithful and true in the performance of all our stipulations. We have never attempted to drive them from their ancient possessions, nor to permit others to do so, by withholding our promised protection. We have never endeavored to deceive them as to the nature and extent of their rights, nor to intimidate them into an acquiescence with our wishes. Is such the language now addressed to them? Is such the course now about to be pursued?

Sir, when gentlemen refer us to the past policy of the government, and ask us still to adhere to it, I tell them to take the whole policy together. Hold out as many inducements as you please, to persuade the Indian tribes to exchange their country for another beyond the Mississippi, but, at the same time, assure them, that, until they freely and voluntarily consent to remove, they shall be protected in the possession and enjoyment of all

the rights which they have immemorially possessed, and which we have recognised and solemnly guarantied to them in existing treaties. But the gentlemen have said, and reiterated, that the bill contemplates only the voluntary removal of the Indians; and they are astonished that the proposal should meet with any opposition. Sir, have they yet to learn that there is no opposition to their free, unconstrained, voluntary removal? Has any man upon this floor, or in this Congress, opposed it? Do the numerous memorials, which weigh down your table, oppose it? The honorable member from Tennessee, (Mr. Bell,) to sustain his assertion, that the public mind had been perverted, deceived and misled upon this subject, said, that the uniform language of all the petitions was, that the Indians might not be coerced and compelled to remove; that the public faith might be kept and redeemed. Now, Sir, is there any remonstrance against the voluntary removal of these tribes? Is there an objection to it from any quarter, unless it is to be accomplished by coercion, or force, or withholding from them that protection, which we are bound to afford? I know of none, and I tell the gentlemen, once for all, that the only opposition is, to a forced, constrained, compulsory removal.

The gentleman from Georgia, who first spoke upon this subject, (Mr. Lumpkin,) has gone farther, and discovered the sources of the opposition, and the motives from which it springs. He has told us, that it has its origin among enthusiasts in the northern States, who, under the pretence of philanthropy and benevolence, have acquired a control over the Indian councils—have sent missionaries among them, who "are well paid for their labors of love," and who are actuated by a sordid desire for "Indian annuities." The gentleman has reproached the memorialists who have addressed us, as "intermeddlers," and "zealots," and expresses his strong disapprobation of appealing to religious associations, or intermingling religious considerations in aid of political and public objects. Sir, I am not about to vindicate the policy which the gentleman has reprobated. The occasion does not call for it. But does he know upon whom his reproaches fall? Does he remember the first pamphlet which was laid upon our table, in reference to this subject? It is entitled "Proceedings of the Indian Board in the City of New York;" and I call the attention of the gentleman to it, if he wishes to ascertain who are endeavoring to enlist religious societies and associations in the concerns of government. What was the origin of this "Indian Board," and of whom is it composed? It originated with the government. The superintendent of Indian affairs, acting under the auspices and by the direction of the department of war, opened a correspondence with divines in that city. He invited the formation of the society for the purpose of aiding the objects of government—he was sent on to deliver an address explanatory of the purposes of the administration, and to assist in the establishment of the association. It was formed, and is composed, chiefly, of religious men, who have solely in view,

I doubt not, the benefit and preservation of the Indians, and have been made to believe that humanity requires their removal. Among these proceedings, I find also a letter written by the superintendent, under the direction of the department of war, to a gentleman in Boston, (J. Evarts, Esq.) upon the same subject—disclosing the views of the government, and soliciting his attention to the condition of the Indians, and inviting his co-operation in measures calculated to improve their situation. The gentleman from Georgia has alluded to a series of letters with the signature of William Penn, and has denounced the author as an "intermeddler" in matters which does not concern him, and a "zealot," intruding his opinions upon this house, and upon the country. Now, Sir, in attributing these letters to the gentleman I have already adverted to, (Mr. Evarts,) I disclaim all knowledge of the fact that is not common to every member of the house. I know him only as possessing a reputation for intelligence, philanthropy, benevolence and untiring zeal in the promotion of human happiness, which any one upon this floor might be proud to possess. Is he an intermeddler? Has he obtruded his opinions upon this subject? Sir, was he not invited and solicited to its consideration? He was; and he did consider and investigate, and has given the result of his researches and reflections. What was he to do? Hold his opinions in subserviency to the will of the government? Do gentlemen forget in what age and in what country we live? Are we retrograding, while the spirit of free inquiry and unrestrained opinion is pushing its onward progress, even under monarchies and despotisms? Is it in this country only to be met with checks and rebukes? Sir, have the free citizens of this nation no right to investigate subjects so highly interesting to our national prosperity and character, and to form opinions, except in accordance with the views of government? The gentleman regards it perfectly proper and correct to form religious associations, and issue pamphlets even in the northern States, when the object is in aid of his designs. But when a sense of right, and justice, and humanity, leads to a different conclusion, then the gentleman can hardly find terms strong enough to express his abhorrence of intermingling religious considerations with political movements. Sir, I wish gentlemen would fairly meet and answer the arguments which have been addressed to us, and not content themselves with the use of harsh epithets, and the imputation of base motives.

When was this complaint about enthusiasm, and mixing religion with politics, first heard of? Missionary establishments had long existed among the Indians, with the approbation and by the aid of government. Their object was to meliorate the condition, and elevate the character of these tribes, thereby rendering them better neighbors to Georgia, and essentially promoting her interests. Not a syllable of complaint was heard; Georgia was perfectly satisfied, and the other States were left at full liberty to send their missionaries, and expend their funds in improving the Indians within her border. But

when a new crisis has arisen, and the claim of these Indians to their own lands has come in question, then, if they are found not to coincide in the schemes of Georgia and of the administration, it is all "enthusiasm," fanaticism, "sordid interest," "selfishness, delusion, hypocrisy."

I do not know, Sir, that it is necessary for me, or for any one, to stand here in vindication of the motives of those intelligent and estimable men, who have devoted time and treasure in the benevolent purpose of converting the Indians to civilization and Christianity—who have established schools and churches, and have been the means of their improvement and advancement in the arts of social life. The country will do justice to their motives and their actions. It is one thing to make an impeachment, but quite another thing to sustain it. The gentleman has been liberal in accusations of the most odious complexion—and by what are they sustained? By that gentleman's opinion, and by nothing else—he brings no facts to corroborate it; and he must pardon me if I decline to adopt his conjectures, or to regulate my action in any degree upon assumptions, for which I discover no foundation.

But the gentleman inquires why any opposition should be made to the bill, which contemplates only the voluntary removal of the Indians; and he complains of great misrepresentation, on the part of those who oppose it, because they hold out the idea that force is to be used; while he strenuously denies that such a purpose is cherished in any quarter. Now, Sir, if the gentleman had confined his denial to the intentions of the government of the United States, it is very possible he may be correct. I do not know that the administration means to employ any force; but if that gentleman meant to assert that the Indians within the limits of Georgia are not to be operated upon in a compulsory manner, from some other quarter, I do not assent to his position. I believe they are. It may not, to be sure, be by an army in the field, advancing to the sound of drum, with banners displayed, to drive them from their homes, at the point of the bayonet. But, Sir, is there no compulsion except military compulsion? Can men be coerced by nothing but guns and bayonets? I say that those Indians are not to be left in circumstances, where they can act in an unconstrained and voluntary manner. And when the gentleman inquires why we oppose the bill, I tell him, because it does not provide for the exigency of the case. It does not provide for the security and protection of the Indians in their possessions and rights. It does not answer their demands upon us. Though this bill professes in itself nothing hostile, yet, if its effect will be to leave the Indians in circumstances where they can make but one choice, then it is clear that they are compelled. For what is compulsion but placing men in circumstances where they have no alternative left them? The gentleman affects to be greatly amazed that we do not at once assent to his bill. But supposing that the bill shall pass, and the Indians shall not choose to leave their homes, I ask the gentleman, Will they be

left in the same situation in which they have hitherto been placed? Will they be permitted to enjoy the undisturbed possession of their soil and jurisdiction? If so, and no external bias or oppression is to be brought to bear upon them, and they shall be left perfectly free and independent, as they were left when previous laws have been passed, relating to the removal, to which the gentleman has referred, then I am content. We have not a word to say. But it is not so; and the gentleman knows it is not so. He says no force is to be applied. Oh no. No force. Only the laws of Georgia are to be extended over them! Their ancient customs, laws, usages, are to be abolished—their council fires are to be extinguished—their existence as a political community to be annihilated.

Sir, in what manner has this subject been brought before us? The President, to be sure, has called our attention to it in his message, and recommends the measure proposed in this bill. But, beside this, we have urgent memorials from the Creeks and Cherokees, reminding us of our treaties and our engagements to them, and demanding the fulfilment of those stipulations. What answer do we propose to give? They ask, Will you perform your engagements? We reply, We will help you to remove farther into the wilderness. Is this such a reply as we are bound to give? They tell us they wish to remain, and to be protected, where they now are; and I object to the bill, because it does not furnish this protection. For what purpose does Georgia extend her laws over these Indians, but for compelling them to remove? to enable her to get possession of the land? What does Georgia gain by legislating over these Indians, unless it be their lands? We all know the nature of the claim which Georgia sets up—that the soil of the Indian country belongs to her—that its jurisdiction is in her—that the Indians are tenants at her will, whom she may at any time remove—that, before the compact of 1802, she had a right at any time to take the land by force, and that she has hitherto forborne only because the United States had engaged to extinguish the Indian titles for her. She says, expressly, "that the land is hers, and she will have it," but that she will not resort to violence "until other means have failed." Other means then, it seems, are first to be tried; and, if they fail, the obvious consequence is, that she will resort to violence. Now, what are these other means? The gentleman from Georgia has told us, that, after having long exercised great forbearance, Georgia has at length caught a gleam of hope from the elevation of our present chief magistrate, and the recognition by him of her long delayed rights. Give me leave to tell the gentleman, that the President has never recognised the rights which Georgia claims, unless the right of jurisdiction, which the President admits to be in Georgia, is equivalent to the right of soil, which Georgia claims—unless it gives, also, a title to the land; for this she is to get by violence, if other means fail.

[Here Mr. Lumpkin interposed, and denied that he had ever said that Georgia meant to resort to violence in any case.]

Sir, I did not charge this language upon that gentleman; he is not authorized to speak as to what Georgia will or will not do. The language I have cited, and the principles avowed, are to be found in a report and resolutions adopted by the Legislature of that State in 1827; they are the solemn declarations by the State of the policy which she means to pursue. The gentleman said, to be sure, that perhaps the language of that report was too strong; and probably the State of Georgia will not say the same thing now. Why? Because she feels sure of getting the land without violence. Other means are in progress which must be successful. Is it not apparent that the object of extending her laws over the Indians is to drive them across the Mississippi; and now they tell us that no compulsion is contemplated. Sir, if compulsion is not contemplated to be practised, it is contemplated to be permitted. The Indians, tell us that they cannot remain under the laws of Georgia; and the President himself, and the secretary of war, say, in so many words, to the Indians, that their only means of escaping this dreadful calamity is to emigrate to the west. The tenor of all the language employed proceeds upon the idea that it is a calamity which they cannot endure. And this is no new idea. A gentleman, not now a member of this house, in a report made upon this subject to a former Congress, has truly said, "that such a measure must prove destructive to the Indians."

I have said, that the President had not recognised the rights of Georgia, as Georgia lays them down. What is his language? He says, through the secretary of war, to a delegation of Cherokees, "An interference to the extent of affording you protection, and the occupancy of your soil, is what is demanded of the justice of this country, and will not be withheld." It seems, then, that they are to remain in the occupancy of their soil. But this is not compatible with the claims of Georgia. Where does the gentleman discover his ray of hope, but in the assurance that the operation of the laws of Georgia will compel the Indians to abandon their country.

The chairman of the committee takes the same ground, and says, that it is no great hardship for the Indians to be brought under the laws of the State, inasmuch as they will still "enjoy their own lands," and, "as it is understood" that the States do not contemplate to take the land away from the Indians by force, there can be no harm in passing this bill. I do not know whence the gentleman derives this "understanding." I, for one, understand no such thing. I understand that the States do mean to have the land. It is the land they want. Georgia claims, by the compact of 1802, that the Indian title shall be extinguished, in order that the land may come into her possession. Has she ever claimed the mere sovereignty, as such? Never—but always the land. When, therefore, the honorable chairman says, "It is understood," I say that it is not understood, and that it cannot be understood from the public acts of the State. Is there any man on this floor entitled to speak

in the name of a sovereign, independent State, as to what she will, or what she will not do? and this when she tells us that the land is hers, and that she "will have it," though she will not resort to violence until other means fail? These other means are her laws. If she extends them over the Indians, and the Indians still remain where they are, then, clearly, the other means will have failed; and then, if we may believe her own words, she does mean to resort to violence. When the gentleman therefore says, that it is with great satisfaction he observes that the President recognises the rights of Georgia, I tell him the President does no such thing, and that Georgia will be as little satisfied with this executive as she was with the last, if he protects the Indians on any terms in the occupancy of their lands. Sir, I have been endeavoring to show that the object and intention of Georgia, in extending her jurisdiction over the Indian tribes, is to compel them to remove. Such will be its effect. Upon this subject, hear the commissioners who were sent last year to negotiate with the Indians for their removal:

General Carroll, to the secretary of war, describing the difficulties he met with in inducing the Indians to emigrate, says, "The truth is, they rely with great confidence on a favorable report on the petition they have before Congress. If that is rejected, and the laws of the States are enforced, you will have no difficulty of procuring an exchange of lands with them."

General Coffee, upon the same subject says, "They express a confident hope that Congress will interpose its power, and prevent the States from extending their laws over them. Should they be disappointed in this, I hazard little in saying that the government will have little difficulty in removing them west of the Mississippi."

Mr. Chairman, I think it can require no further proof to satisfy us that the legislation of Georgia is designed, and will have the certain effect, to coerce the Indian tribes, and to compel them to seek a new home, beyond the reach of the avidity and oppression of the white man, if such a spot remains to them of all their once vast domains. Yet we are told that this removal is to be purely voluntary; and gentlemen point us to the bill, and say, there is no compulsion there. No, Sir; and there is no protection there.

I shall proceed, now, Sir, to consider the general subject of our relations to some of the Indian tribes who are to be affected by this bill, and who have invoked our protection; the obligations we have entered into with them; the claims they have upon us; and the duties which we are bound, by the most solemn stipulations, to perform towards them. In this question are involved the rights of Georgia, as a member of the Union, and the powers of the general government over Indian tribes resident within the borders of a State. These topics have already been so fully and ably discussed elsewhere, and so eloquently and elaborately debated here, by the honorable member from New York, (Mr. Storrs,) that I am sensible very little

remains to be said. I shall endeavor, as far as possible, to avoid the repetition of arguments and authorities, which have been used by others much more ably than I could hope to do. Our relations with the Indian tribes, upon which this bill is designed to operate, grow out of treaties entered into between them and the government of the United States. With the Cherokees, who are more directly concerned in this question than either of the other tribes, we have negotiated not less than sixteen. The first was that of Hopewell, in 1785, entered into by Congress, under the Articles of Confederation. This was a treaty of peace, and terminated a war, which had existed between them and the United States. The Cherokees placed themselves under the protection of the United States, "and of no other sovereign whatever." After the adoption of the federal Constitution, in 1791, the treaty of Holston was formed; which was, also, "a treaty of peace and friendship." The tribe again placed itself under the protection of the United States, and "of no other sovereign whatever," and stipulated that they would "not treat with any foreign power, individual State, or with individuals of any State." A liberal cession of territory was made to the United States, and the United States, by the 7th Article, "solemnly guarantied to the Cherokee nation all their lands not hereby ceded." Various other treaties have been made since that time, by which a large territory has been acquired, and renewed guaranties given. These treaties have been negotiated by every administration except the last—have been confirmed by every Senate, and approved and sanctioned by every House of Representatives in the appropriations they have made to carry them into effect.

By these treaties we have recognised the Cherokees as a "nation"—a political community, capable to contract and to be contracted with. We have received them under our protection and sovereignty, and prohibited them from treating with any "individual State," or placing themselves "under any other sovereign whatever." We have admitted their title to the lands in their occupancy, have paid them for the cessions they have made, and solemnly guarantied to them "their lands." Yes, Sir, "their lands," which had not been ceded. All these rights they claim of the United States by virtue of treaties still subsisting.

But we are told that they are not a nation, or community, and the laws of Georgia have abrogated and dissolved their political character, and incorporated them as citizens of the State, subject to its laws. The party with whom we contracted is annihilated. This is the first infraction of which they complain. They are now claimed as under the sovereignty of Georgia alone, though we had received them under our sovereignty, and guarantied to them our protection. Of this they also complain, as a violation of our treaties. The lands which they occupy are denied to be theirs; and Georgia says, "she will have them." How does this claim comport with the obligations we have entered into? Our stipulation with the Indians is, that they are a distinct community, and have the power of holding their own

land. This guaranty is about to be violated, and we are called upon to sit still, and see it violated. Sir, I could go farther. The guaranty in the treaty of Holston is a guaranty to the Indians as a nation. No individual ownership is therein recognised; and when individuals leave the tracts on which they have resided, those tracts revert, not to the United States, nor to the government, nor to any body else, but to the nation, as a nation. But this bill contemplates a separate negotiation with individuals, and it declares, that all the land abandoned by individuals, who become emigrants, reverts not to their tribe, but to the State of Georgia. We are called to pass a law exchanging land with private individuals, when we have guarantied the possession of that land to the Cherokee nation, as common property; so that we are not only to stand by and see Georgia violate our faith, but to pass a bill, which very bill expressly violates it. The President tells us, Georgia had a right at any time to extend her laws over the Indians within her limits, and says that her doing so will be no violation of our guaranty. But I ask whether the laws of Georgia do not annihilate the party we contracted with? Georgia comes in, and says, that all laws, customs and usages of the Indians, as a nation, shall be utterly obliterated. When this has been done, where, I ask, is the party with whom we contracted? I ask Georgia to show us the community, with which we have entered into engagements. They will tell me there is no such party. The nation, as such, ceases to exist. But what has caused it to cease? The laws of Georgia. It is those laws that have violated our stipulation, and utterly annihilated the very party with whom we stipulated.

It seems to me, the gentlemen get into a dilemma. The ground they take is, that Georgia has a right to abolish the tribe, and to resolve it into its elements, as individual citizens of the State. Well, Sir, grant this, and what then? Then they bring in a bill to enable the President to hold treaties—but with whom? With the tribe of Indians? With the Cherokee nation? Why, Sir, that tribe is abolished—there is no Cherokee nation. With whom, then, is the President to make a treaty? With the Indians convened in council? Sir, they cannot convene—the laws of Georgia forbid it, and subject them to imprisonment and punishment if they do. They dare not assemble to treat, and yet the President is to hold a treaty with them! If the gentleman's positions are true, he will have nobody to treat with. Not with individuals—that is in the very face of our contract. I refer gentlemen to the treaty of Holston, where the guaranty is to the nation.

But we learn, as I have already had occasion to remark, that the construction which the President places upon these treaty stipulations, is not "adverse to the sovereignty of Georgia." While he admits the Indians to have a just right to the occupancy of the lands, he denies to them the right of jurisdiction and government over their territory. Sir, have we not received those tribes under our protection, and refused to permit them to become subject "to any other sovereign whatever?" Is this not

"adverse to the sovereignty of Georgia?" The idea of separating the jurisdiction of a nation from the territory, which it owns as a nation, is a modern discovery. And I yield so far to the argument of gentlemen on the other side, as to admit that the discoverer, whoever he may be, is entitled to the full credit and benefit of the discovery. Such was not the doctrine of Georgia in 1825. In the discussions which then took place between her chief magistrate (governor Troup) and the secretary of war, in relation to the treaty of the Indian Springs, the former said, "Soil and jurisdiction go together; and if we have not the right of both at this moment, we can never have either by better title. If the absolute property and the absolute jurisdiction have not passed to us, when are they to come? Will you make a formal concession of the latter? When, and how? If the jurisdiction be separated from the property, show the reservation which separates it: 'tis impossible."

The argument then was, that jurisdiction was acquired by treaty, as well as soil. The argument now is, that jurisdiction always belonged to the State, and that compact is not necessary to confer it. The governor inquired when and how you could obtain jurisdiction, if separated from the property, and declared that it was impossible. Sir, the doctrines then relied upon for the promotion of the interests of Georgia are in direct collision with the doctrines now advocated for her benefit. Will she preserve consistency, or must new principles of law and right be discovered at every new emergency? The honorable chairman, (Mr. Bell,) in his report upon this subject, says, "The fundamental principle, that the Indians had no rights, by virtue of their ancient possessions, either of soil or sovereignty, has never been abandoned, either expressly or by implication."

Sir, it might be answer enough to say, that this principle has never been asserted, and to call upon gentlemen to prove its existence by other means than the absence of an abandonment of it. But as the gentleman has chosen to state the proposition in this form, I will endeavor to show that it has been expressly abandoned, and by some of the States which are most interested in the passage of this bill. By the treaty of the Indian Springs, in 1825, with the Creek nation, all their land in Georgia, and a considerable portion of that in Alabama, was ceded to the United States. This treaty was annulled in 1826, for gross fraud and corruption, and a new treaty formed, ceding the lands in Georgia, but not those in Alabama. These States protested against rescinding the first treaty, because, as was contended, Georgia had acquired vested rights under it; the property in the soil, by virtue of the compact of 1802. The lands in Alabama, upon the extinguishment of the Indian title, belonged to the United States, while those in Georgia, agreeably to our engagements in the compact, belonged to that State. These treaties became the subject of discussion in the Senate; and I will read a short passage from the debate:—Mr. Benton, of Missouri, said, "he thought that Georgia had no further cause of dissatisfaction with the treaty; it was Alabama that was injured, by

the loss of some millions of acres, which she had acquired under the treaty of 1825, and lost under that of 1826." "She had lost the right of jurisdiction over a considerable extent of territory"—lost the right of jurisdiction. So, Sir, the doctrine then was, that right of jurisdiction was acquired by treaty, and, when the treaty was rescinded, the right of jurisdiction fell with it. Mr. King, of Alabama, said, "The constitutional question, as regards Georgia, yet remains in force; and, though it may not seem to apply to Alabama, I still think our rights were violated in annulling that treaty, and adopting another."

Now, the rights which Alabama acquired under that treaty were merely rights of jurisdiction—the soil passed to the United States. If, therefore, the complaint of the Senator was well founded, it was the right of jurisdiction which was taken away by the last treaty. If Alabama lost any rights by the abrogation of the first compact, it was that of jurisdiction. Yet the argument now is, that the State always had jurisdiction, anterior to all treaties; and, by virtue of it, her laws have been extended over the whole Indian country. But, Sir, there is a more direct renunciation of this doctrine still.

In the session of 1826, a Senator from Mississippi (Mr. Reid) moved a resolution of inquiry into the expediency of authorizing process, both civil and criminal, to be served upon persons, citizens of the States, who had fled to the Indian territory for protection. The resolution proposed no other action than upon citizens of the United States. In explanation of his views, Mr. Reid said:—

"He presumed it was already known, that more than half of the State of Mississippi is still in the occupation of the Indian tribes, the Choctaw and Chickasaw nations. In regard to the action of the State laws upon these people, there never had been any difficulty, nor was it ever sought on the part of the State of Mississippi, to extend its jurisdiction over them." "His object was to call the serious consideration of the Senate to the condition of our own citizens, who, after having committed crimes or contracted debts, locate themselves among those Indians, and consider themselves as beyond the jurisdiction of our laws." * * * "He repeated, it was not sought on the part of the State of Mississippi, or by her Senators in this house, to enforce the action of the laws on the Indians themselves; they did not claim to consider them as subject to their operation. The Indian tribes have laws and traditionary usages of their own, and are entitled to the patronage and protection of the general government."

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"At present, as far as he had been able to investigate the subject, it was the opinion of some able jurists on this point, that process does not extend to persons residing on the Indian territory; and he would wish to bring to the consideration of the legislative authority of the Union, the question, whether it is competent for us to extend our civil and criminal process, or whether it is one of the appendages, one of these people's rights as sovereigns, to afford a sanctuary to vagabonds from every part of the Union." * * * * * *

"At the last session of the Legislature of Mississippi, a proposition was made to extend the civil power of their courts to their own citizens who had contracted debts within the State, and had fled to this savage

sanctuary. The matter was debated for many days, and it was at last decided, that there existed no power in the State to extend its laws in the manner sought by the proposition." * * * "Therefore, if there was any remedy on this subject to be obtained, it was to be at the hands of the general government, and not by force of any competent authority in the State government."

I think, Mr. Chairman, it sufficiently appears from the extracts I have read, that the State of Mississippi, so deeply interested in this question, and so anxious to maintain all its rights, has wholly repudiated, both by its Senators in Congress and by its Legislature, the doctrine which the chairman asserts "has never been abandoned." Jurisdiction, in its most ample extent, is hereby conceded to the Indians; and if that State has more recently, under the auspices of the present executive, adopted a different course, and obtained new views of its rights, it remains for it to justify its course to an enlightened public opinion, and to the scrutiny of the world. But, Sir, by the 11th article of the treaty of Holston, we have expressly recognised the Cherokee country not to be within the jurisdiction of any State. That article provides, that if any crime be committed within their territory, by a citizen of the United States, which, "if committed within the jurisdiction of any State," would be punishable by the laws of such State, it shall be proceeded against in the same manner as if the offence had been committed "within the jurisdiction of the State, &c." Can any thing be more manifest, than that the Indian territory was not to be deemed within the jurisdiction of the State? This is, in truth, a guaranty, on our part, that we will not invade their jurisdiction. And are we now to be told, that we have given no guaranty "adverse to the sovereignty of Georgia?"

Sir, is it becoming a great and magnanimous nation to frit-ter away its obligations, to search for nice distinctions and refined casuistry, to justify its violations of faith? I have been attempting to show, Sir, that the idea of separating the right of jurisdiction from the right of soil is novel and unfounded; and that, by our stipulations, the right of jurisdiction is fully conceded to the Indian tribes within their own territories. If I have succeeded in this, it will hardly be contended that the soil is not theirs also. Indeed, I do not understand, that the executive or the committee assume the position that they have not a right to the occupancy of their lands, however Georgia may assert the contrary, and claim them as exclusively her own. It will not, therefore, be necessary for me to discuss the question, what rights have the Indians to their lands, more especially, as the gentleman from New York (Mr. Storrs) has done it with so much ability.

I shall, however, notice hereafter some of the arguments which have been adduced to sustain the right which Georgia sets up to these lands.

The gentleman who last addressed the committee (Mr. Foster) seems to be aware that the obligations and guaranties contained in our treaties do, in truth, conflict with the pretensions of Geor-

gia; and he assumes the position that they are, therefore, unconstitutional and void. The same sentiment is advanced by the President, and by the committee on Indian affairs, if the meaning and construction of the treaties are such as we have endeavored to maintain. The ground taken is, that the United States had no right to enter into stipulations inconsistent with the sovereignty of Georgia; that we are under obligations to her, which we must first discharge. Now, Sir, it comes with an exceeding ill grace from us, when we are called upon to perform our promises, to return for answer that we had no authority to make them. Have we not received ample compensation for the promises made? Whether we had the authority or not, is a question between us and Georgia, and not between us and the Cherokees. They hold our warranty of authority; and shall we refuse to be bound by it? But if we had no right to make the contract, what is to be done? I presume, Sir, it is to be rescinded.

If the treaty is not binding on us, can it be binding on the Cherokees? If we refuse to be bound by the guaranty, may they not refuse to be bound by the cession? The one was the consideration for the other. Shall we restore them to their original condition? Shall we cede back the territory? Gentlemen have foreseen the difficulty, and they say, as we cannot give back the land, we will make compensation; and what is the compensation which they propose? It is, that we should say to these Indians, Move farther off—leave us—cross the Mississippi—go to the Rocky Mountains. This is our will, and you must obey. Sir, it requires two parties to make a contract, and the Indians do not agree to this mode of compensation. They tell us it is inflicting a deeper injury still. And now, Sir, when we are about to compensate them for a violation of our faith, we propose to do it not as they will, but as we will—by withholding "our aid and our good neighborhood"—by permitting them to be driven into the recesses of the forests, to become the prey of more barbarous nations. And this we call compensation.

But why had we no right to enter into the stipulations? Gentlemen tell us that we are thereby erecting a State within the limits of another State, against the consent of the latter, which is expressly interdicted in the Constitution. Sir, I deny the fact. I deny that by any thing in the treaties we do erect or form another State. If these Indian tribes are a State now, they were a State before. They obtain no additional authority from the treaty. They derive from it no political existence. The treaty merely recognised that which had existence at the time it was made. It gave the Indians nothing. They were as much a State before as they are now. But I ask, What is the true meaning of that term in the Constitution? The "State" there mentioned means a member of this confederacy—a State having all the prerogatives, and bound by all the obligations which that instrument contained—that shall have representatives on this floor and in the Senate, and should have a voice in the election of President. The clause is simply a limitation of the power of Congress in the admission of new States into the Union. Sir, do we admit a new State into

the Union, when we acknowledge the Cherokees as an independent tribe? Do we restrict them as the Constitution restricts the States of this Union? Do we confer powers and privileges which that instrument confers? We do not. When I heard gentlemen urge this objection, and talk about erecting a State within the limits of another State, I was astonished. It may be proper enough to call the Cherokees a "State," if we affix to that word some other meaning than it bears in the Constitution; but "State," as there used, means neither more nor less than a member of the Union.

It is said, however, that these Cherokees are forming a government, and are taking rapid strides to power. This position is equally untrue. They have not formed a government. They always had a government. They were ruled by councils, and by traditionary laws; and all they have done is to put that which was formerly oral only, into a written form. This may be improving their government, but it is not creating it, nor assuming any new power. They disclaim such an idea. But it is said that this recognition is inconsistent with the sovereignty and jurisdiction of Georgia. Do not gentlemen perceive that this argument assumes the whole question? The very question is, whether the jurisdiction of Georgia does or does not extend over the Cherokees. They assume the very question we are debating. They say that these lands lie within her chartered limits, and that therefore she has jurisdiction over them as a matter of course. "Chartered limits!" "Chartered limits!" Sir, one would think there was some magic, some charm in these words, which conferred immense powers, so great as to subvert all Indian rights whatever. But what are chartered limits? Certain lines described in charters derived from Great Britain. Gentlemen argue that the sovereignty of Georgia is derived from her chartered limits. Sovereignty follows them as a thing of course. This brings us to a further question. What right had the crown of Great Britain to grant these chartered limits, and to extend them round the Indian possessions? Did the Indians consent? No, Sir. I shall be told that it was an act of sovereignty; and this brings us back again to the former question, Whence comes your sovereignty? And thus we are reasoning in a circle.

The State has jurisdiction and sovereignty because it has received chartered limits, and it has chartered limits from its right of sovereignty. Each of these is the cause, and each the effect of the other. To such reasoning as this I have a short answer. I tell gentlemen, that chartered limits are one thing, and jurisdictional limits are another. I deny that the two are co-extensive. Chartered limits convey no other right than as against those who grant the charter—no other power than to obtain sovereignty and jurisdiction from those who possess it, and could confer it. If the gentlemen mean to fix any other idea to the term *chartered limits*, then I deny that the Indians are within the chartered limits of Georgia, and I ask, How came they there? And here we come to an argument which has been much pressed.

We are told of the right of discovery; that the discoverers had

a right to plant colonies, and to protect them, and to drive off the hostile tribes; and we are further told, that civilization has a superior claim over the savage life; that the earth was intended by Providence to be cultivated. The gentleman from Georgia (Mr. Foster) has read the opinions of eminent men to sustain these positions. Sir, these are very fine theories, and I shall not stop to question them; but they have nothing to do with the matter in hand. The question is, not what rights the first discoverers and settlers had, nor whether civilization might or might not lawfully usurp the possessions of the savage. All these might be very good considerations, and very interesting questions, before we entered into contracts with the Indians. But the simple question now is, What are their rights under these contracts? How have the natural, original rights of the Indians been modified, confirmed, and guarantied by compacts? How have our rights as discoverers, or as civilized nations, been waived, defined, and limited by treaties? Surely it will not be contended that the rights of discovery, or conquest, or civilization, are so sacred and immutable as to be incapable of change or modification by voluntary compact.

The rights of discovery have been so clearly defined by the honorable member from New York, (Mr. Storrs,) and so ably expounded in the other branch of Congress, in debates now before the world, that I shall say nothing in relation to them, but to repeat in a single word, that they are conventional rights between discoverers.

As to the right derived from cultivation and civilization, when does it commence? Only when that part of the world inhabited by civilized man is full and overflowing, and a portion of its inhabitants are compelled, from the necessity of the case, to seek a new home. Civilization may not till then say to the savages—Give ground, yield us more space. Now, I ask whether Georgia, Alabama or Mississippi, are so densely peopled, that more land is wanting for their citizens? Are there not 200 millions of acres belonging to the United States still unsold? Is not the population of these States sparse and thin? Let them wait till their own territory shall be filled up; then they may assert this right with a better grace. But then another question may arise on this very doctrine. The Indian territory may then be as dense in population as Georgia, and its inhabitants as civilized also. If that period should ever arrive, may not the Indians turn round on Georgia, and say—We are a civilized people, our country is full to overflowing, and we want some of your land to accommodate our suffering population? Will Georgia be willing to yield to such a claim?

Sir, the period is distant, very distant, when we can make good a right to usurp the Indian possessions on the ground of the superior title of civilization. The gentleman from Georgia (Mr. Foster) read the opinion of Mr. Adams, the late chief magistrate of the Union, of Dr. Morse, and of some other person, said to be an eminent lawyer, upon this point; and how far did it meet the present juncture? The subject under consideration was the original right of the natives to the whole continent. Does this lawyer assert that the rights of civilization were so imperious and inexorable as to leave the Indian no spot of earth to rest upon? Does

he deny that the right, whatever it was originally, may be modified by compact? Does he assert the monstrous position, that when civilized covenants with savage man, the compact is not binding? No, Sir; he went into the question only as considered aside from all compacts and conventions; and the strongest language used was, "that the original right of the Indians had been doubted." None, surely, will contend, that out of the rights of civilization grows a right to obliterate at will all your own agreements and promises. We stop here. We base our argument on the foundation of contract.

But to return, Sir, to the question, what authority the United States had to enter into these stipulations. It seems to me that those who so strenuously deny it, should account for its undisturbed exercise for so many years past. It was first exercised under the Confederation, by virtue of which the treaty of Hopewell was formed. The gentleman read an article in that instrument to show that each State retained its own sovereignty; and hence he argues that the United States were divested of all power within the range of that sovereignty. But, Sir, the rights retained were those not delegated. The States did delegate to the United States the right of peace and war, and they expressly interdicted that power to the States. "No State shall engage in any war, without the consent of the United States in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of delay," &c. Georgia could not therefore engage in war, except in the imminent danger provided for. As to peace: "The United States shall have the sole and exclusive right and power of determining on peace and war, except in the cases" mentioned before. The States had therefore no right to make war, except when under actual invasion, or imminent danger of invasion; but they had not the corresponding right of making peace, under any circumstances. The right of war was derived from the imminence of the danger; but the United States must come in, in order to conclude a peace. The treaty of Hopewell was a treaty of peace formed by virtue of this power.

It was made to put an end to war. Had the State of Georgia a right to conclude the peace? No, Sir. The United States alone could do it by treaty. Is there any other mode? None. The gentleman complained, in respect to the treaty of Hopewell, that the Cherokees had acknowledged their dependence on the government of the United States, had placed themselves under its protection, and under no other sovereign whatever. He said the government had no right to make such a stipulation. But if the government must conclude a peace, (and all yield that,) surely they had the right to fix the terms. Why was this objection not made at the time? I am told that Georgia protested against the treaty. I am well aware of it. The ground of that protest was, that the United States were assuming the right of regulating matters with the Indians which belonged to Georgia; and that the legislative right of Georgia had been expressly reserved in the Ar-

ticles of Confederation. The article reads thus: The United States shall have the power of "regulating the trade, and managing all affairs with the Indians, not members of any State, provided that the legislative right of any State within its own limits be not infringed or violated." Georgia protested, because she thought her legislative rights were infringed. Her protest was submitted to Congress in 1787, at a time when many of those who had formed the instrument of Confederation were administering the government, and must be supposed to know the extent of the powers which it conferred.

A long report was made in Congress upon the subject of the protest, denying the ground taken by Georgia and North Carolina, which State had also protested, and affirming that the proviso had no such meaning as was contended. I will read a part of that report:

"But there is another circumstance, far more embarrassing, and that is—the clause in the Confederation relative to managing all affairs with the Indians, &c. is differently construed by Congress and the two States within whose limits the said tribes and disputed lands are. The construction contended for by those States, if right, appears to the committee to leave the federal powers, in this case, a mere nullity; and to make it totally uncertain on what principle Congress is to interfere between them and the said tribes. The States not only contend for this construction, but have actually pursued measures in conformity to it. North Carolina has undertaken to assign land to the Cherokees, and Georgia has proceeded to treat with the Creeks concerning peace, lands, and the objects usually the principal ones in almost every treaty with the Indians. This construction appears to the committee, not only to be productive of confusion, disputes, and embarrassments in managing affairs with the independent tribes within the limits of the States, but by no means the true one. The clause referred to is—'Congress shall have the sole and exclusive right and power of regulating the trade, and managing all affairs with the Indians, not members of any of the States; provided that the legislative right of any State, within its own limits, be not infringed or violated.'—In forming this clause, the parties to the federal compact must have had some definite objects in view; the objects that come into view, principally, in forming treaties or managing affairs with the Indians, had been long understood, and pretty well ascertained, in this country. The committee conceive that it has been long the opinion of the country, supported by justice and humanity, that the Indians have just claims to all lands occupied by, and not fairly purchased from them; and that, in managing affairs with them, the principal objects have been those of making war and peace; purchasing certain tracts of their lands; fixing the boundaries between them and our people, and preventing the latter settling on lands left in possession of the former. The powers necessary to these objects appear to the committee to be indivisible, and that the parties to the Confederation must have intended to give them entire to the Union, or to have given them entire to the State.—These powers, before the revolution, were possessed by the king, and exercised by him; nor did they interfere with the legislative right of the colony within its limits: this distinction, which was then, and may be now taken, may perhaps serve to explain the proviso part of the recited clause." The laws of the State can have no effect upon a tribe of Indians, or their lands, within the limits of the State, so long as that

tribe is independent, and not a member of the State; yet the laws of the State may be executed upon debtors, criminals, and other proper objects of those laws, in all parts of it; and therefore the Union may make stipulations with any such tribe, secure it in the enjoyment of all or part of its lands, without infringing upon the legislative right in question. It cannot be supposed the State has the powers mentioned, without making the recited clause useless, and without absurdity in theory as well as in practice; for the Indian tribes are justly considered the common friends or enemies of the United States; and no particular State can have an exclusive interest in the management of affairs with any of the tribes, except in some uncommon cases. The committee find it difficult to reconcile the said construction of the recited clause made by the two States, and their proceedings before mentioned, especially those of Georgia, with what they conceive to be the intentions of those who made the said motion; for the committee presume that the delegates of Georgia do not mean that Congress is bound to send their forces to punish such nations as the State shall name, to act in aid of the State authority; to send her forces and recall them as she shall see fit to make war or peace. Such an idea cannot be consistent with the dignity of the Union, and the principles of the federal compact. But the committee conceive that it is the opinion of the honorable movers, and also the general opinion, that all wars and hostile measures against the Creeks, or any other independent tribe of Indians, ought to be conducted under the authority of the Union, at least where the forces of the Union are employed; that the power to conduct a war clearly implies the power to examine into the justice of the war, to make peace, and adjust the terms of it; and that, therefore, the terms or words of the said motion, if it be adopted by Congress at all, must be varied accordingly."

Such, Sir, was the opinion of Congress of its powers under the Confederation; and it practised upon that opinion. Not long after this, the present Constitution of the United States was formed and ratified, Georgia assenting. One article of that instrument is—"All treaties made, and which shall be made, under the authority of the United States, shall be the supreme law of the land." The treaty of Hopewell was a treaty then "made." Its validity as a treaty had been already asserted by Congress. Georgia assented to this article of the Constitution, thereby sanctioning the treaty of Hopewell, and giving it validity, if it had none before. Georgia yielded the point in controversy: by virtue, as she supposed, of her reserved legislative rights, she had made a treaty, and acquired lands by it. But of what use was that treaty and those lands to her? None at all. And by the compact of 1802, she expressly stipulated that the United States should extinguish the Indian title to the county of Tallahassee—the lands which the Indians had before yielded. Sir, was not this an admission that the treaty which the State had previously made was of no validity? that the Indian title still remained to be extinguished? The Confederation did not recognise the right of Georgia to make a treaty, and Georgia, therefore, did not acquire the lands; but had to call in aid the power of the United States to do it for her.

Such was the authority possessed by the United States under the articles of Confederation, and such was the exercise of

it. Not long after the treaty of Hopewell was made, and the powers of the general government asserted in the report I have read, the present Constitution was adopted, conferring upon the United States the same powers of peace and war—of regulating the affairs with the Indians, without the limitation as to the legislative rights of the States, which was the foundation of the Georgia protest. The restriction under the Confederation was found to be embarrassing and obscure, and therefore was omitted; and, as Mr. Madison, in a number of the Federalist, referred to by the gentleman from New York, (Mr. Storrs,) says, was designedly omitted. The United States, therefore, derives its authority under the Constitution; and in the very same year in which it was ratified, commenced negotiations and concluded treaties with Indians living within the limits of a State. Did they do this incautiously, ignorantly? No, Sir; they proceeded in the most cool and cautious manner. The government was circumspect and deliberate. The then President did not take a single step without the previous consent of the Senate. He went to that body in person, and inquired whether he would be authorized to offer the guaranty and to pledge our faith? The response was, that he should be so authorized. The States interested heard the stipulations which were proposed, and they set up no objection. It was proposed to them that the President should treat with the Indians within the limits of the State, and Georgia assented to it. And now, are we to be told that the general government had no authority, and that Georgia is not bound by the treaty? The treaty was made in conformity with their advice and consent, and was subsequently ratified by the Senate also, with the consent of Georgia; and are we now asked, where was our authority to make it? Those who deny the right must account for so extraordinary a procedure.

Gentlemen say they can well account for it; and the solution is, that the treaty was for their benefit; and, therefore, though the United States had no authority to make it, yet that they submitted to it because it was for their interest, knowing, all the time, that the government had no right to do it.

Sir, it is a well known rule in morals and in common sense, that every one making a promise is bound by it in the sense in which he knows the other party to understand it. When Georgia, therefore, knew the promises which this government was making to the Indians, and yielded her assent, she shall be precluded from asserting that either she or we are not bound, according to the sense we then knew the Indians put upon those promises? By this rule our guaranty is to be measured; and I, for one, will never move an inch to relieve a State which thus permits us to enter into engagements, and receives the benefit of our contracts, and at last comes forward with the complaint that we had no right to make them. I say to Georgia, If we had no right without your consent, your consent has been obtained. It is too late. You are estopped.

Sir, we have heard another doctrine, at which I was, I confess, both astonished and alarmed. We are told that these national treaties are "expedients," resorted to merely to accomplish our own ends, made for our interest, and to be construed for our benefit. We have a very extraordinary history of them in the 16th page of the committee's report. It is there said, we were in a critical situation. Difficulties existed with respect to the forts on our western frontier, and about the Mississippi, with Great Britain and Spain. We had just come out of a long war, and were poor. That we were in no condition to incur Indian hostilities; and in this particular juncture, general Washington was called upon to settle the mode of conducting our relations with the Indian tribes, and to secure our peace with them. That he adopted the practice of regulating our affairs with them by treaties. Sir, are they any the less obligatory because they were made when we were in difficulty? Had we told these Indians, We are now in a critical condition; we want you to treat with us; but by and by, when we get out of trouble, and grow powerful and strong, we shall consider our compacts as expedients—mere matters of legislation over you—do you think they would have ceded their lands? If the Indians, in the day of our calamity, received our plighted faith, and yielded up their territories, so much the more reason is there that we should now observe them as sacredly binding upon us. There is a moral obligation, beyond all treaties, to keep our promises in good faith, in the day of our strength and power, to which, in the day of our weakness, we were indebted for security and peace. Yet the gentleman at the head of one of the committees of this house has told us, that these engagements were mere "expedients" to obtain peace and get the Indian lands. Sir, if such is that gentleman's opinion, I am sorry he expressed it to the world; for I am not willing to affix such a stigma on our national fame; I am not willing to commit the honor of this nation to the gentleman's keeping; and having, as one of the humblest citizens of the republic, some share in her faith and her character, I protest for myself, and for those I represent, against any such interpretation of our engagements.

The 7th article of the treaty of Holston contains the guaranty of which so much has been said in this debate; and the following is the explanation which the committee put upon that article:

"It was therefore thought necessary, in order to ensure peace, that some strong and decisive evidence should be given of the determination of the government to prevent, by force, any further intrusions upon the lands reserved for the Indians, and a guaranty of their boundary was thought of, as the means best calculated to effect that object. It was probably a device adopted more for the intimidation of the whites, than for any effect it was likely to have upon the Indians themselves."

The guaranty was necessary to secure peace—in other words, the Indians would not make peace without the guaran-

ty. But, instead of being for their benefit, and obligatory upon us, it was probably a device for the intimidation of the whites! Sir, I deny this assertion, and I call upon the gentleman to produce his authority for it. How absurd an idea! how utterly preposterous! Will the gentleman tell me that a solemn promise in a treaty with another party was not intended to have any effect upon those to whom it was made—but was a device to intimidate the party making it? Could we not intimidate and restrain ourselves by laws? I repudiate the idea: I cannot consent thus to fix an indelible stigma on the fair fame of my country. Sir, the language of the treaty was sincere, intended to be obligatory upon us, and should be observed most sacredly.

The great object of the gentleman is to procure the removal of the Indians; and to obtain their consent, he proposes, in the bill, that the President shall "solemnly guaranty"—the very words of the treaty of Holston—solemnly guaranty to them the country to which we propose to send them. The gentleman says, that the guaranty in that treaty was "probably a device for the intimidation of the whites." Well, Sir, let the project be executed—and within a period that the gentleman may live to see, the whites will again press upon them, and say, You must go—move farther west. When the Indians inquire for what cause, the same reasons will be given then that are given now. All history shows, that if you remain near us, you will be destroyed. The red man cannot live in contact with the white. Humanity and your own interests require your removal. Besides, we have a right to the land. Our ancestors discovered it. Are we not civilized? And has not civilization a right to prevail over savage life? Suppose it be so, reply the Indians, but we were sent here not by our consent, but by your power—and did you not "solemnly guaranty" to us these limits? Very true—but were you so ignorant as not to know that our guaranty was only an expedient? only a device? Had you not sagacity enough to perceive that it was only a plan to get rid of you? to send you off out of the way? Were you not told by us at the time, that "Indian treaties were only a species of legislation?" Were you not told by a committee of Congress, that these things were only a device? that in our conduct towards you, "one of those expedients was, to appear to do nothing which concerned" you, "either in the appropriation of your hunting grounds, or in controlling your conduct without your consent." Nothing but appearance—really and truly, we did as we pleased.

Sir, I have no doubt the gentleman is sincere in the guaranties he proposes to give; and intends to bind the nation in all future time. If he should live to see his assurances thus explained and chaffered away, he will feel something of the emotion which Washington, and the fathers of the country, would have experienced, could they have anticipated that their solemn assurances were to be thus lightly regarded.

[Mr. Bell interposed, and said the report had not been correctly understood—that he did not contend that the guaranty was not binding.]

Sir, I regret very much, if I have misrepresented any sentiment of the report. If the gentleman will point out any part of it which he wishes to be read, I will cheerfully read it, and abide by his correction.

[Mr. Bell declined.]

Sir, I have commented upon it as I understand it, and I quote the language which I find in it. The report gives another reason why the guaranty should not be understood in the sense we affix to it—

"The victory of the 20th of August, 1794, over the northern Indians, with whom the Creeks and Cherokees had kept up a regular correspondence; the expedition, which was secretly planned, for carrying the war into the Cherokee country, and which was successfully conducted by the suffering frontier inhabitants; and the pacific dispositions of the Spanish authorities of Florida, which preceded the treaty of 1795 with Spain, were the actual restorers of peace."

"After this time, the government was under no obligation to renew the guaranty contained in the treaties of 1790 and 1791, with the Creeks and Cherokees, but, as it has done so, it only shows that that stipulation was not believed to affect the nature of the title by which those tribes held their lands, or to introduce any new principle, in relation to their rights generally."

Thus, Sir, it seems that our pacific relations with the southern tribes were the result of a victory obtained by general Wayne over the northern Indians, with whom the Cherokees and Creeks had some alliance—that they were therefore vanquished—that after this we were under no obligation to renew the guaranty, and, having renewed it, it is not therefore to be construed as affecting the nature of their title, or the extent of their rights.

Sir, is this the rule by which treaties and compacts are to be construed? I had supposed that the true mode of arriving at the meaning of any clause, was to examine and weigh the terms in which it is couched—to compare it with the general spirit of the instrument, and not to inquire into the inducements and obligations resting upon the parties at its formation. Suppose this guaranty to be the merest gratuity in the world, on our part—that we were, in truth, under no obligations to make it—does it thence follow, that it is to have no meaning, or a restricted meaning? Have we thence a right to construe it away? Surely not. If we have made the guaranty, we must be bound by the guaranty, in its true, full sense, as understood at the time of making it. This idea of abrogating the force of treaties is of modern origin. The parties who now favor it were formerly among the most zealous defenders of the faith and obligation of treaties. In 1827, Georgia contended most manfully, that treaties were sacred, binding, immutable. She demanded the full performance of the stipulations with the Creeks, at the Indian Springs, and wholly denied the power, even of the parties to the compact, to rescind it, though it was founded in gross fraud

and corruption. In every line of her remonstrance, we perceive the tenacity and force with which she clung to the validity of treaties. Sir, in a communication, to which I have already referred, from the President to the Creek Indians, in which he endeavors to convince them that the treaties are not binding upon us, if construed as impairing the sovereignty of Georgia, he claims from them the most exact performance of their obligations: "Our peaceful mother, earth, has been stained by the blood of the white man, and calls for the punishment of his murderers, whose surrender is now demanded, under the solemn obligation of the treaty which your chiefs and warriors, in council, have agreed to. To preserve peace, you must comply with your own treaty." With what face can we require of them the full, faithful performance of their promises, when, in the same breath, we tell them that we had no authority to give the assurance on our part? Let us construe, and so perform our engagements, as to preserve the national faith and honor—as will in no event expose us to the censures of the world.

Sir, I have before me many documents which I had intended to use, illustrative of the policy of the government towards the Indians—as well of the crown before the revolution, as of the Congress under the Confederation, and since, under the present Constitution. In all these, I find abundant vindication of Indian rights, to the full extent as I have endeavored to maintain them; but I forbear to trespass upon the kind indulgence of the committee.

I will now proceed, Mr. Chairman, to a brief consideration of some other topics involved in the bill before us, and which have been discussed at much length by the member from Tennessee, (Mr. Bell.) The gentleman computes the expense, which will be incurred in the prosecution of this measure, at the most, as not exceeding five millions of dollars. The very nature of the subject forbids accurate and minute calculations. As a general principle, we all know that public expenditures vastly exceed previous estimates. Nothing is more common. I am not possessed of sufficient data to form an estimate with any pretensions to accuracy; but, Sir, when you consider that 60,000 people are to be removed a distance of several hundred miles—that they are to be subsisted for one year after they have reached the destined land—that customary presents and rewards are to be given to them—that all their improvements, possessions, and property which they leave behind, are to be paid for—that agents, commissioners, and contractors, are to be employed and compensated—and moreover that you will be obliged to purchase of the tribes beyond the Mississippi a right to plant others there, I think the most orthodox believer in the dangers of a redundant treasury will have no occasion to be alarmed for the liberties of the country. Gentlemen, who have resisted the prosecution of internal improvements as tending to corrupt the States, will have the satisfaction to see this source of their disquietude removed. But, Sir, I shall make no objection on the score of expense. Protect the Indians in their rights and pos-

sessions where they now are, and you may have almost any sum to effect their removal, when it can be done with their free, voluntary, unbiased consent. The gentleman seemed to anticipate an objection on the ground of a want of constitutional power in Congress to make the appropriation. I shall say but a word on that subject. If these tribes are to be regarded as distinct communities, independent of the States where they reside, possessed of lands which will belong to us when their title is extinguished, I can see no valid objection of the kind the gentleman anticipated. But if they are to be regarded as individual citizens of a State, subject to its laws, possessing property as individuals, and protected in its enjoyment, then I do not easily perceive the authority which we possess to make the appropriation. Suppose, Sir, that some fifty thousand of the citizens of New York or New England wish to emigrate to the west, and ask the aid of government to enable them to accomplish that object. Would such an application be listened to for a moment? Should we not be reminded that the powers of the general government were all "enumerated," and among them there was none authorizing it to appropriate the public money to enable individuals to change their location? Sir, this hall would echo with the perpetual reiteration of "constitutional scruples."

The gentleman (Mr. Bell) has urged the passage of this bill on the ground of humanity to the Indians, and the promotion of their own interests and happiness. He informs the committee, that the tribes proposed to be removed are a degraded, declining race, who are rapidly wasting away, and will ere long be destroyed, if they remain in their present situation. The lessons of history are adduced to show that the red man cannot live in contiguity with the white—that it is the inevitable fate of the savage to perish whenever civilization has planted its foot within his confines. However just this may be in the general, it has no application to the southern tribes, particularly to the Cherokees, who are chiefly interested in the subject before us. They are not hordes of wandering savages—they are not hunters.—They till the earth—they have mechanics' shops and trades—schools and churches—cultivated fields and flocks—have made great advances in civilization—formed a written code of government—established a press. Is it for the benefit and happiness of such a people to be expelled from their country, and planted again in the depths of the forest, to resume the wild state from which they had emerged? Sir, I do not find any where in the records of history, that the condition of such a people can be promoted by such a measure. Least of all do I find that the interest or honor of any nation can be promoted by a violation of its public treaties—an infraction of its plighted faith. Whether it be for the benefit of the Indians to remove or not, is a question for them to decide; and so long as they shall determine that it is not for their advantage and happiness, and refuse to comply, so long are they entitled to protection and security in all their rights. In several of our treaties with them

we have had in view their permanent residence, in the territories which they possess. We have held out inducements for them to become cultivators, and have stipulated to furnish them "with useful implements of husbandry," for the purpose of reclaiming them from the savage state. The treaty of 1817 is too explicit on this point to be omitted. The preamble recites, that, in 1808, a delegation of the Cherokee nation signified to the President the anxious desire of one part of the nation "to engage in the pursuit of agriculture and civilized life, in the country they then occupied," and that this portion wished for a division of the country, and an assignment of lands for that purpose; that, "by thus contracting their society within narrow limits, they proposed to begin the establishment of fixed laws and a regular government."

Another portion of the tribe wished to pursue the hunter life, and, for that end, were desirous to remove beyond the Mississippi. The President (Mr. Jefferson) answered, "The United States, my children, are the friends of both parties, and, so far as can reasonably be asked, are willing to satisfy the wishes of both. Those who remain may be assured of our patronage, our aid and good neighborhood." Such was the preamble; and it concludes, "Now know ye, that, to carry into effect the before recited promises with good faith," &c. the parties concluded the treaty. I ask, Mr. Chairman, if we have not "assured" them of a permanent residence—if we have not promised them "our good neighborhood;" and now, that the experiment has so far been successful, and they have made rapid advances in civilization, are we to be told that humanity and their own interests require them to be thrust again into the wilderness? Sir, what will be their condition in the country to which it is proposed they shall remove? The gentleman has described the region, about six hundred miles in length, and two hundred and fifty in width, between the western boundaries of Arkansas and Missouri and the base of the Rocky Mountains, somewhere within the limits of which is to be their ultimate destination. The gentleman's plan is to locate the southern tribes among the Cherokees, Creeks, Choctaws, and Chickasaws, who have already moved. Besides these parts of tribes, the Osages are there; and the warlike bands of the Camanches, Sioux and Pawnees, roam over the vast prairies in search of game, or on their predatory excursions. It is now designed to plant a civilized colony amid a people of these savage habits. They are not hunters, whom we are about to send there. Agriculture is their employment. They are not warriors. We have induced them to lay aside the war club and the tomahawk, and to substitute the peaceful implements of husbandry. They have flocks and property of various descriptions. How long can they retain it in the neighborhood of the warlike tribes I have enumerated? How long can their schools and their churches be maintained in the bosom of the "wilderness?" Sir, they will be only objects of plunder to the stronger and more savage bands around them. They will be overrun; and, if they resist, it will only provoke extermination. Can they till the ground when its fruits will ripen only to be gathered and

consumed by hordes of savages, who know no law but force, no right but power? Sir, I firmly believe they cannot exist in the country to which you are about to send them; and I can give no countenance to a project which contemplates their removal against their wishes and their remonstrances. We have among the papers before us a very affecting account of the distress and privations which the tribes west of the Mississippi already endure. I will read an extract which has been often quoted, but which cannot be too often called to our recollection, from the letter of general Clark:

"The condition of many tribes west of the Mississippi is the most pitiable that can be imagined. During several seasons in every year, they are distressed by famine, in which many die for want of food, and during which the living child is often buried with the dead mother, because no one could spare it as much food as would sustain it through its helpless infancy. This description applies to Sioux, Osages, and many others, but I mention those because they are powerful tribes, and live near our borders, and my official station enables me to know the exact truth. It is in vain to talk to people in this condition about learning and religion."

The honorable gentleman answered this objection in anticipation: and what was his answer? Why, that distress and suffering of this description was common among Indians—that it is incident to their character, and habits and modes of life—that it is not more frequent now than it always has been. And is this a sufficient answer? Are we to send a whole people from their abodes of comfort, to scenes of distress like these, with the cold answer that it is no hardship because such sufferings are common? Because the tribes west of the Mississippi are compelled to endure these distressing privations, therefore it is no hardship to send other tribes there to endure them also! Will such an answer satisfy benevolence, philanthropy, humanity? Will it alleviate the pangs of the civilized Cherokee, when he consigns his dead wife and his living child to the earth, to be told that such scenes are of frequent occurrence?

And, Sir, how will these sufferings be aggravated by such an accumulation of numbers? The country does not now afford subsistence enough for its population. How much greater will be the deficiency, when sixty thousand more are added to its starving inhabitants? The gentleman has said that the country is well adapted to their wants, abounding in timber and water, and capable of a high degree of cultivation. If it were so, from the causes I have mentioned, they can never possess and cultivate it in security. We have been called upon, at the present session, to make a military road, of several hundred miles in extent, upon the western borders of Arkansas and Missouri, and to mount ten companies of infantry for the protection of the white inhabitants against the predatory incursions of the Indians. The delegate from Arkansas assures us that the security of that frontier depends upon these measures. How much more will the feeble tribes you propose to send still farther into the forests, need your protection? The gentleman has not taken into his account of expenses those

which will be incurred in keeping up a military establishment in that vicinity, which will be absolutely necessary to preserve peace among the different tribes, who will find perpetual sources of discord when crowded together in the small limits assigned them.

But, Sir, is the country suited to their wants? The gentleman must allow me to say, that I repose little confidence in the information he has received upon this subject. Descriptions from other sources give a different account. I will only refer, however, to the opinion of a delegation of the Chickasaw nation, who were sent last year west of the Mississippi, "in search of a home." It is among the documents upon our tables. They could find no country to which they would consent to remove, except one small tract which was already occupied. The vacant lands, they said, were not adapted to their convenience. "If we had found a country to please us, it was our intention to exchange. It is yet our wish to do so. But we cannot consent to remove to a country destitute of a single corresponding feature to the one in which we at present reside." Such, Sir, is the information we have received from the Indians themselves. If they wish to remove, I would furnish them assistance to do it. But I would first secure them in their rights where they now reside. I would then furnish them the most ample information possible of the country in which it is proposed to locate them—give them every means of forming a correct judgment as to their situation and condition in their new abodes, and then leave the decision to them.

When, Sir, under these circumstances, they shall decide to remove, I apprehend no objection will be made to it. It has been urged, however, very zealously by the gentlemen, (Messrs. Bell and Lumpkin,) that the great mass of the Southern Indians are now willing and anxious to remove; but are restrained and kept in awe by the chiefs, and white men who reside among the tribes. Where is the evidence of this? Upon what facts do the gentlemen make the assertion? Is it to be found in the circumstance that they have uniformly and firmly resisted all your offers and solicitations? Commissioners were sent last year to negotiate upon this subject, with instructions so peculiar, that I cannot forbear to advert to them. What were these instructions? Why, Sir, not to permit their official character to be known, but to appear among the Indians as their friends and advisers, solicitous only for their benefit and happiness. In this mode their confidence was to be won. They were not to convene the Indians in council, agreeably to uniform custom whenever negotiations were to be conducted with them, but to see "the chiefs and other influential men, not together, but apart, at their own houses;" and, when other arguments and advice should fail, "offers to them of extensive reservations in fee simple, and other rewards, would, it is hoped, result in obtaining their acquiescence." So it seems the Indian territory, the property of the whole nation, was to be obtained by offers of "rewards" to the chiefs and influential men, to procure their assent. Is this the mode in which Indian rights are to be treated? Bribery to the chiefs! What is the reason given for not convening the Indians in council? A most remarkable one

truly! It is in these words: "The past has demonstrated their utter aversion to this mode, whilst it has been made equally clear, that another mode promises greater success. In regard to the first, the Indians have seen, in the past, that it has been by the results of councils that the extent of their country has been from time to time diminished. They all comprehend this." Now, Sir, it is represented that the Indians are willing to exchange their country, and to remove. If so, why not convene them in council, as it is by means of councils that the extent of their country has been diminished? Would they have such an "utter aversion to this mode," if they were really willing to adopt the measures to which such a mode leads? No, Sir. They see it has been by councils that their country has been diminished, and they are opposed to councils because they are opposed to any further diminution.

Upon this subject we have the testimony of a gentleman resident among the Cherokees, whom the member from Georgia (Mr. Lumpkin) represents as worthy of all confidence, and whose word surely he will not deny. I will read an extract of a letter from Mr. Worcester, published among the documents of the Senate:

"There is one other subject on which I think it is due to justice to give my testimony, whatever it may be worth. Whether the Cherokees are wise in desiring to remain here or not, I express no opinion. But it is certainly just, that it should be known whether or not they do, as a body, wish to remain. It is not possible for a person to dwell among them without hearing much on the subject. I have heard much. It is said abroad, that the common people would gladly remove, but are deterred by the chiefs, and a few other influential men. It is not so. I say with the utmost assurance—it is not so. Nothing is plainer than that it is the earnest wish of the whole body of the people to remain where they are. They are not overawed by the chiefs. Individuals may be overawed by popular opinion, but not by the chiefs. On the other hand, if there were a chief in favor of removal, he would be overawed by the people. He would know that he could not open his mouth in favor of such a proposition, but on pain not only of the failure of his re-election, but of popular odium and scorn. The whole tide of national feeling sets, in one strong and unbroken current, against a removal to the West."

With this evidence before me, I must be pardoned when I tell the honorable chairman, (Mr. Bell,) that I do not repose confidence in the information with which he has been furnished, and has presented to the house. It seems to be assumed, without evidence, and against evidence, that the Indians are willing to remove, but are restrained by some overpowering cause. In 1827, the complaint of Georgia was, that the government had neglected its duty, and, instead of adopting a course which would terminate in the removal of the Indians, had pursued a policy calculated to render their residence permanent. There was no complaint then against the chiefs. It was all the fault of government. Well, Sir, we have now a government co-operating with Georgia. This ground of complaint is

removed. Still the Indians refuse to go. Some new reason must be found for their refusal. Sir, would it not be better to inquire into the fact, than to be searching for the causes of that which is only assumed to exist? Is it not natural and reasonable that they should be unwilling to abandon their homes? Are they not men? Are they not capable of attachments? Have they no ties to bind them to the land of their birth—to the soil which covers the ashes of their fathers? Is not their country dear to them? Sir, in their view, that earth wears a deeper verdure, and the heavens pour a more unclouded radiance, than in all the world besides. It is unnatural, it is unreasonable, to suppose that they are "anxious" to quit the scenes of their childhood, to seek a new home, far off, in the lands of the setting sun.

And, Sir, how are they to be removed? The only project I have seen is that contained in the "Report from the bureau of Indian affairs" to the secretary of war, and by him transmitted to Congress. The proposition is, that they shall be removed "by contract"—and the recommendation of this plan is, that it can be done much cheaper than in any other mode. By contract, Sir! What, are sixty thousand human beings—the sick, the aged, the infirm, children and infants—to be transported hundreds of miles, over mountains, and rivers, and forests, by contract! by those who will engage to perform the service for the smallest sum! Are you to hold out such inducements to long and fatiguing marches—to scanty and cheap provisions? Will you place these hapless, deceived and abused people at the mercy of contractors, whose only object is gain? in whose bosoms Indian wrongs and Indian suffering will find but little sympathy? Sir, if this is the mode in which the measure is to be executed, I will never yield my sanction to it, though the Indians should be willing to remove. No, Sir! if they must go, let their path be made smooth. If the treasury is to be opened, let it be opened wide enough to relieve all their wants—to render their situation, bad at the best, as tolerable as the exigency will admit.

Sir, the question before us, in all its aspects, is one of great and momentous magnitude. It becomes us to pause and consider well the step we are about to take. If it be at all doubtful, let us so decide as shall preserve, and not impair, our national character. If we err, let it be on the side of humanity. In the inaugural address of the present chief magistrate, he assures the country—"It will be my sincere and constant desire to observe, towards the Indian tribes within our limits, a just and liberal policy; and to give that humane and considerate attention to their rights and their wants which are consistent with the habits of our government, and the feelings of our people." Sir, are we about to observe towards them "a just and liberal policy?" Are we giving a "humane and considerate attention to their rights and their wants?" This pledge remains to be redeemed. If we now turn a deaf ear to the Cherokees, who have appealed to our justice, and claimed

our protection; if this bill shall pass, in its present shape, providing no security for their rights, their destiny will be irrevocably fixed. And how will our conduct toward them bear the scrutiny of an enlightened world?—and the just judgment of impartial history? Sir, if we permit these feeble remnants of once powerful nations to be driven from their homes, though it may not reach the same celebrity which history has assigned to that transaction, in the close of the last century, which blotted Poland from the map of nations, yet will it stand upon the same page of injustice and oppression, and receive the same sentence from posterity. It will stand, too, in the annals of the world, by the side of those enormities which our mother country has practised in another hemisphere; and though the poor Cherokee may find no Burke or Sheridan to tell the story of his griefs, and to hold up the picture of his wrongs to the execration of mankind, it will go up to a higher tribunal, where sophistry cannot delude, and where the humblest Indian will be equal to his proudest oppressor. Sir, it was said by one often quoted upon this floor, (Mr. Jefferson,) and in reference to a subject not dissimilar to the present, "I tremble for my country when I remember that God is just, and that his justice will not sleep forever." And although the particular mode of retribution which was in his mind on that occasion may not now be anticipated, yet let us recollect "that the Almighty has no attribute which can take side with us" in a conflict between power and right—between oppression and justice.

The honorable gentleman from Georgia (Mr. Lumpkin) has anticipated a period, when it will be odious to be known as an advocate of the Indian rights. I know not what pretensions the gentleman possesses to the power of augury—but, in my estimation, he has consulted the stars to very little purpose, if such be the lessons they read him. Before that period shall arrive, you must burn all the records of the government—destroy the history of the country—pervert the moral sense of the community—make injustice and oppression virtues—and breach of national faith honorable; and then, but not till then, will the visions of the gentleman assume the form of realities. Sir, if I could hope, as I surely cannot, that any feeble efforts of mine would outlive the brief hour which gave them existence,—if I could give perpetuity to any thing I can say or do,—there is no occasion I should covet more than that which I now possess. If I could look forward, as I certainly do not, to a long life of public service—to honors and distinctions,—I would forego all for the power to roll back the tide of desolation, which is about to overwhelm these hapless sons of the forest. If I could stand up between the weak, the friendless, the deserted, and the strong arm of oppression, and successfully vindicate their rights, and shield them in their hour of adversity, I should have achieved honor enough to satisfy even an exorbitant ambition; and I should leave it as a legacy to my children, more valuable than uncounted gold—more honorable than imperial power.

Sir, the crisis in the fate of these people has arrived. The responsibility is upon us—upon us as a House, and upon each of us as individuals. The Indians make their last appeal here. All other sources of protection have failed. It remains with us to decide whether they return in joy and hope, or in sorrow and despair. Shall we listen to their cry? If we do not, then is their sun about to set, it may be in blood and in tears. Then, indeed, will all human means have failed, and, deserted and abandoned by our government, which had solemnly sworn to protect them, they are commended, O God, to thy sovereign mercy.

EXTRACTS FROM A LETTER WRITTEN BY THE REV. S. A. WORCESTER TO MR. WILLIAM S. COODEY, ONE OF THE CHEROKEE DEPUTATION AT WASHINGTON, DATED MARCH 15, 1830, AT NEW ECHOTA, IN THE CHEROKEE NATION.

Whatever deficiencies there may be in my statements, I shall use my utmost endeavor that nothing colored—nothing which will not bear the strictest scrutiny—may find a place.

It may not be amiss to state, briefly, what opportunities I have enjoyed of forming a judgment respecting the state of the Cherokee people. It was four years last October since I came to the nation, during which time I have made it my home, having resided two years at Brainerd, and the remainder of the time at this place. Though I have not spent very much of the time in travelling, yet I have visited almost every part of the nation, except a section on the northeast. Two annual sessions of the General Council have passed while I have been residing at the seat of government, at which times a great number of the people of all classes, and from all parts, are to be seen.

The statistical information which has been published respecting this nation I hope you have on hand, or will receive from some other source; it goes far towards giving a correct view of the state of the people. I have only to say, that, judging from what I see around me, I believe that a similar enumeration, made the present year, would show, by the comparison, a rapid improvement since the census was taken.

The printed constitution and laws of your nation, also, you doubtless have. They show your progress in civil polity. As far as my knowledge extends, they are executed with a good degree of efficiency, and their execution meets with not the least hinderance from any thing like a spirit of insubordination among the people. Oaths are constantly administered in the courts of justice, and I believe I have never heard of an instance of perjury.

It has been well observed by others, that the progress of a people in civilization is to be determined by comparing the present with the past. I can only compare what I see with what I am told has been.

The present principal chief is about forty years of age. When he was a boy, his father procured him a good suit of clothes, in the fashion of the sons of civilized people; but he was so ridiculed by his mates as a *white* boy, that he took off his new suit, and refused to wear it. The

editor of the Cherokee Phœnix is twenty-seven years old. He well remembers that he felt awkward and ashamed of his singularity, when he began to wear the dress of a white boy. *Now*, every boy is proud of a civilized suit, and those feel awkward and ashamed of their singularity, who are destitute of it. At the last session of the General Council, I scarcely recollect having seen any members who were not clothed in the same manner as the white inhabitants of the neighboring States; and those very few (I am informed that the precise number was four) who were partially clothed in Indian style were, nevertheless, very decently attired. The dress of civilized people is general throughout the nation. I have seen, I believe, only one Cherokee woman, and she an aged woman, away from her home, who was not clothed in at least a decent long gown; at home, only one, a very aged woman, who appeared willing to be seen in original native dress; three or four, only, who had at their own houses dressed themselves in Indian style, but hid themselves with shame at the approach of a stranger. I am thus particular, because particularity gives more accurate ideas than general statements. Among the elderly men, there is yet a considerable portion, I dare not say whether a majority or a minority, who retain the Indian dress in part. The younger men almost all dress like the whites around them, except that the greater number wear a turban instead of a hat, and in cold weather a blanket frequently serves for a cloak. Cloaks, however, are becoming common. There yet remains room for improvement in dress, but that improvement is making with surprising rapidity.

The arts of spinning and weaving, the Cherokee women generally put in practice. Most of their garments are of their own spinning and weaving, from cotton, the produce of their own fields; though considerable northern domestic, and much calico is worn, nor is silk uncommon. Numbers of the men wear imported cloths, broadcloths, &c., and many wear mixed cotton and wool, the manufacture of their wives; but the greater part are clothed principally in cotton.

Except in the arts of spinning and weaving, but little progress has been made in manufactures. A few Cherokees, however, are mechanics.

Agriculture is the principal employment and support of the people. It is the dependence of almost every family. As to the wandering part of the people, who live by the chase, if they are to be found in the nation, I certainly have not found them, nor even heard of them, except from the floor of Congress, and other distant sources of information. I do not know of a single family who depend, in any considerable degree, on game for a support. It is true that deer and turkeys are frequently killed, but not in sufficient numbers to form any dependence as the means of subsistence. The land is cultivated with very different degrees of skill.

SPEECH

OF THE

HON. JABEZ W. HUNTINGTON,

REPRESENTATIVE FROM CONNECTICUT

DELIVERED IN THE HOUSE OF REPRESENTATIVES, SITTING AS IN COMMITTEE OF THE WHOLE, ON THE BILL FOR THE REMOVAL OF THE INDIANS, TUESDAY, MAY 18, 1830.

Mr. Chairman: If the bill for which this has been substituted, though nearly identical with it, had been accompanied by a report from the committee, confined to the statement of facts and principles connected with what are said to be the objects of the bill itself, I should not have troubled the House with any remarks upon it. I would not have mingled in a debate which would then have been limited to the expediency of adopting the legislative provisions proposed to be enacted. But as the committee have reported the bill "in conformity with the suggestions contained in the report, and to effect the object recommended in the message of the President;" as that report, and that message, contain sentiments with which I do not accord; as they advance principles, which, in my judgment, are not tenable—principles which, if I understand them correctly, deprive the Indian tribes, to whom they are applied, of rights well defined, long enjoyed, and secured and guarantied by the most solemn compacts, and the plighted faith of a nation, which hitherto has been, and always, I trust, will be, jealous of its own honor, and which will not set the example of a Christian nation disregarding its own engagements because they have been entered into with a weak, defenceless, unprotected people, I have not been willing to give a silent vote upon the proposition now before us. My own sense of duty, and the sentiments of a great portion of my constituents, who take a deep interest in this subject, demand of me, that I should express their opinions and mine, on a topic which is connected with the honor of our common country, and the welfare of a race once powerful, but now weak, and looking to us with anxiety, but not without hope, for that protection which the faith of the government is pledged to afford.

Before I enter into the examination of what are called, in the report, "the *pretensions* of the Indians, and of the obstacles which are considered as being in the way of their indulgence by the government," I solicit the attention of the committee to the language of the executive, in his message at the opening of the session, and to the construction or commentary which

has been put upon it, in another place. I shall examine it with all the respect which is due to the chief magistrate of this nation, and to the elevated and honorable station which he occupies; but, at the same time, and holding his advisers responsible for it, I shall make this examination with all the freedom of a representative of the people, sworn to support the constitution of the United States. I noticed with much pleasure, in the inaugural address of the present executive, the following expressive sentence:—"It will be my sincere and constant desire to observe towards the Indian tribes within our limits a just and liberal policy; and to give that humane and considerate attention to their rights, and their wants, which is consistent with the habits of our government and the feelings of our people." How far this pledge has been observed, will be seen in the progress of this discussion.

In the message, Congress are informed, that the President has been called on by a portion of the southern tribes for protection, in consequence of the extension, by the States of Georgia and Alabama, of their laws over these tribes; that, in answer to this application, he stated to them, that their attempt to establish an independent government would not be countenanced by the executive of the United States; that it was too late to inquire whether it was just for the United States to include these Indians and their territory within the bounds of new States, *whose limits they* could control; and that they should be distinctly informed, that, if they remained within the limits of the States, they must be subject to their laws. The same opinions are advanced, in the letter of the secretary of the war department to the Cherokee delegation, dated April 18, 1829, in which they are told, by order of the President, that the State of Georgia has extended over their country her legislative enactments, in virtue of her authority as a sovereign, independent State, which she and every State embraced in the confederacy, from 1783 to the present time, when their independence was acknowledged and admitted, possessed the power to do, apart from any authority or opposing interference by the general government.—In these documents, then, we find the legislation of Georgia and Alabama over the Indian tribes, within their chartered limits, sustained, as of right, and an explicit avowal made, that the President will not interfere to prevent it. And what is the construction put upon this language? Not merely, that the operation of the State laws is not to be opposed, because the guaranties contained in treaties with the Indians do not require it; not that, if they did require it, the existing laws are insufficient for that purpose; but "because," as stated in the report of the Senate by the committee on Indian affairs of that body, "in the opinion of the executive, constitutional objections exist, which it is not in the power of Congress to remove by any law which they could enact." If this be the right interpretation of the views entertained by the executive, the doctrine is advanced, that treaties made with all the forms and solemnities known to the constitution, ratified

by the President, with the consent of his constitutional advisers, and thus made, so far as the executive branch of the government can make them, the supreme law of the land, and declared so to be by the constitution, are not to be regarded and enforced, if, in the opinion of the President, such treaties contain provisions inconsistent with what he considers the legitimate rights of the states; or, expressed in other words, if the executive deems a law of Congress, or a treaty duly ratified, to be an encroachment upon state rights, or for any other reason an excess of delegated power, he is at liberty to refuse his aid in causing them to be "faithfully executed." Is this a sound interpretation of the duties which the constitution has devolved upon the President? Is *he* made the judge of the extent of the powers of Congress, or the treaty-making power, after that power has been exercised in the manner prescribed by the constitution? Has *he* been constituted, *in such cases*, a judge to determine whether treaties are constitutionally binding? whether laws which have been enacted are void, for want of power to enact them? If so, there seems to be no necessity for the clause in the constitution, which provides, that "the judicial power shall extend to all cases in law and equity arising under the constitution, the laws of the United States, and treaties made, or which shall be made, under their authority." If so, there is no division of the department of this government into executive and judicial; the latter, for all practical purposes, is annihilated, and the provision, that a bill which has been returned by the President with objections, reconsidered, and then approved by two thirds of both houses of Congress, shall become "a law," is a dead letter. The President, if he can lawfully refuse to execute a law, or enforce the provisions of a treaty, because he has constitutional objections or scruples, constitutes himself the executive and judicial departments of this government. Such, in my judgment, is not his prerogative; and I believe it is the first time in the history of this nation, since the adoption of the constitution, that opinions like these have been advanced. Sure I am, that they were not the opinions of any of his predecessors, or of those wise men who framed the constitution, or of the people of this country; and I have deemed it indispensable to advert to them, lest it might be thought, from silence, that they met with universal approbation. The executive has no constitutional right to say he will not execute a law, because he considers it void for want of authority to enact it. No such discretion *has been* confided to him; I trust it never will be; and if his scruples are such as to deter him from enforcing it, let him resign the trust which has been confided to him. This is the only course he can adopt, under such circumstances. The legislative and judicial departments are powerless, and the government is a rope of sand, if such opinions are entertained and acted on. Every law may depend for its execution upon the will of the executive; and, in these days of strict construction, it may be feared that few legislative enactments will pass unhurt through this ordeal of presidential discretion

Having thus, very briefly, adverted to the opinions entertained and avowed by the executive in regard to "*pretensions*" of the Indian tribes, on the supposition that the construction of the treaties made with them, and the laws enacted to regulate the intercourse with them, is correct, I proceed to consider the great questions involved in this discussion.

The report denies to the Indian tribes *any title whatever* to the lands which they occupy within the chartered limits of any state; and asserts a right in the states, in which they are located, to extend their legislative enactments over the Indians, and, consequently, a power to annihilate their political existence, as communities to be governed by their own laws, usages, and customs. Nor does the executive, in his message, *acknowledge* any title to the lands, as subsisting in the tribes.

In the letter from the war department, before referred to, the secretary says, "an interference to the extent of affording you protection, and the occupancy of your soil, is what is demanded of the justice of this country, and will not be withheld;" though he adds what would seem to make this interference of little, if any use; looking very much like "keeping the word of promise to the ear, and breaking it to the hope." It is in these words: "yet, in doing this, the right of permitting to you the enjoyment of a separate government within the limits of a state, and of denying the exercise of sovereignty to that state within her own limits, cannot be admitted. It is not within the range of power granted by the states to the general government, and therefore not within its competency to be exercised. No *remedy* can be perceived but a removal beyond the Mississippi, where alone can be assured to you protection and peace. To continue where you are, within the territorial limits of an independent state, can promise you nothing but interruption and disquietude." And the President, in his message, speaking in reference to the *same tribes*, says, though their "emigration should be voluntary, yet it seems visionary to suppose that claims can be allowed on tracts of country on which they have never dwelt nor made improvements, merely because they have seen them from the mountain, or passed them in the chase." It will be observed, that this language is spoken of the Cherokees, who have dwelt on and improved their lands, and seems, at least, to imply that *they* have no title to the lands within their boundaries. But it is unnecessary to make further reference to the message. I shall content myself with referring to the report, and, so far as I am able to comprehend it, there is not only no acknowledgment of *any title*, in the Indian tribes, but the spirit of every part of it is utterly at war with any such acknowledgment.

The committee say, (p. 4,) "It is certain that possession, actual or constructive, of the entire habitable portion of this continent, was taken by the nations of Europe, divided out, and held originally, by the right of discovery as between themselves, and by the rights of discovery and conquest as against the aboriginal inhabitants. The pretensions of the Indians to be the owners of

any portion of the soil, were wholly disregarded by the crown of England."

Here the opinion is advanced, that the crown, by discovery and conquest, obtained either the possession, or right of possession, of the whole of the soil then and now occupied by Indian tribes, and admitted no right in these tribes to any portion of it. The title and the possession being thus in the crown, it permitted the Indians, in all of them, to be governed or otherwise disposed of by the colonial authorities, without any interference on its part, until within a short period before the revolution. And in all the acts, first of the colonies, and afterwards of the states, the fundamental principle that the Indians had *no right*, by virtue of their ancient possession, either of soil or sovereignty, has never been abandoned, either expressly, or by implication.

The principle was adopted (p. 8,) that the Indians had no permanent interest in their hunting grounds; their right to hold their *reserved* lands can be supported on no other ground than the grant or permission of the sovereignty or state in which such lands lie. This was in the crown before the revolution, and in the states after that event, succeeding, as they did, to the sovereignty over all the lands within the limits of their respective charters. The Indian boundaries were considered *temporary*. The treaties made with them were but a mode of government, and a substitute for ordinary legislation, which were from time to time dispensed with, (p. 12.) Territory and jurisdiction, considered in reference to a state or nation, are inseparable; the one is a necessary incident to the other; and, as a state cannot exist without territory, the limits of that territory are, at the same time, the limits of its jurisdiction. The policy of *Georgia* (p. 13,) has always been, to *contract* the Indian reservations, gradually, within such reasonable limits, that no part of the country should remain uncultivated. Her policy in this respect was a part of her *rights;* any thing which tends to defeat its operation, is a deprivation of right. It is understood that neither Georgia, nor any other state, will attempt to appropriate the lands within the Indian reservations without their consent.

Can it be doubted, after these quotations, that the report denies to the Indians the right both of sovereignty and soil? It would seem not: and, supposing this to be its meaning, and as expressive of the opinions of the committee, which we are called upon to adopt or reject, I proceed to an examination of the nature and extent of the Indian title to the lands within their boundaries.

In my judgment, neither of the positions assumed by the committee in their report is tenable. I think it capable of demonstration, that the right of the Indian tribes to the lands which they occupy is paramount to, and exclusive of all others, whether nations, states, or individuals; it is a right to *occupy, enjoy, possess*, and *use*, according to their own discretion, indefinitely and for ever; and, for all practical purposes, is *absolute*. The only restriction is that of *alienation* at pleasure. This power of alienation is not, and cannot be claimed by these tribes; for

the right of *discovery*, in the first instance, and the voluntary compact of the tribes afterwards, gave to the government of the United States the ultimate title, charged with the Indian right of possession, or occupancy, and the exclusive power of acquiring that right. In other words, the Indians have the sole right of occupancy. To that they have a just and legal right, and it includes the use, in such manner as they please, and is indefinite in duration, and of which they cannot be dispossessed, except by cession or conquest. The government have the exclusive right of purchase, and the ultimate right, whenever the possession becomes vacant, by voluntary dereliction, or by the extinction of the tribes.

I think, also, it can be shown, that these tribes are separate, distinct communities, wholly independent of *the states;* not subject to their legislation, and possessing the right of self-government—the right to be governed by their own laws, customs, and usages; and under no restraints, except such as they have imposed upon themselves, in their treaties with the United States.

The foundation of their title is *occupancy.* They have been in *possession*, claiming the rights to the soil, from our first knowledge of them. They were found here, when this country was discovered. *They*, and they only, have possessed it; and this occupancy has been from time immemorial. Writers on jurisprudence agree in the proposition, "that the original right to all kinds of property arose from pre-occupancy, and that, in a state of nature, every one might possess himself of and retain any vacant subject. The first occupant had a right to grant, cede, or transfer, the subject he had possessed himself of, to such persons, and upon such terms, as he thought proper; and if, before such grant, cession, or transfer, the occupant died, his property descended to his children. The right of transmitting property always resided in the owner, and civil institutions only prescribe the mode of carrying that right into effect. In that period of society, when countries were formed, and their boundaries fixed, we find that different districts were appropriated to the native owners, the first occupants, or, in case of vacant or derelict lands, to the first discoverers."

What rights over the lands inhabited and possessed by the Indian tribes did the government making the first discovery of them acquire? Were they such as to annihilate the previous existing title of the aborigines to them? Not at all. The discovery conferred the right of making settlements, of forming establishments, whenever the prior right of occupancy was *lawfully* extinguished; connected with the right of pre-emption, and the ultimate right in fee, whenever the Indian tribes should become extinct. The power to exclude other nations from occupying, or making purchases of the natives, was an incident to the discovery, and was afterwards conferred by the Indians in their treaties.

It will be obvious that this view of the subject is correct, by referring to the uniform course adopted by the crown of Eng-

land, by the colonies, by the states after the revolution, and by the states and general government since that period, up to the present time; confirmed by repeated adjudications of the highest judicial tribunal of this nation.

The first attempt to dispose of a whole continent, without reference to the rights of the aboriginal inhabitants, was made in 1493, the year after the discovery of America, by pope Alexander VI. who gave it to the crown of Spain, on the assumed principle that *infidels* were *unjust possessors* of the lands on which their Creator had placed them. This grant was accepted, contrary to the advice of the civilians and crown lawyers of Spain; and one of the bishops, in a treatise dedicated to Charles the V., holds this strong language: "The natives of America, having their own lawful kings and princes, and a right to make laws for the good government of their respective dominions, could not be expelled out of them, or deprived of what they possess, without doing violence to the laws of God, as well as the laws of nations."

The English princes, though they did not acquiesce in the right of the pope to make these grants, made out their commissions on the same principle, the distinction between *infidel* and *christian* nations. It is true, that grants were made, charters passed under the great seal, and the British crown asserted the right of conveying the soil, though in possession of the natives; or, as it has been sometimes said, of appropriating the lands occupied by the Indians. But it was only the *ultimate* right of property, the reversionary interest, which they claimed, and which they professed to have the power to convey. It was the right to extinguish the Indian title of occupancy, and nothing more, which they either possessed or claimed to possess. The Indians were always "admitted by the crown to be the rightful occupants of the soil, with a legal, as well as just claim to retain possession of it, and to use it according to their own discretion," and of which they could not be dispossessed by legislation, but by conquest or cession only.

I have said, that the Indian title, thus explained, was always and uniformly admitted by the *crown*, the *colonies*, the *states*, the old confederation, and the government of the United States since the adoption of the constitution; and that it has received the sanction of the highest judicial tribunal of this country. I will ask the attention of the committee to the proof in support of this position.

In 1750, the superintendent of Indian affairs informed the Indians assembled at Mobile, in the name of the king, that no encroachments should be permitted on their lands; and that all treaties made with them would be faithfully kept on the part of the crown.

In September, 1753, by order of the king, instructions were sent to the governor of the province of New York, to appoint commissioners, who, in conjunction with commissioners from other neighboring governments in alliance with them, should make a treaty, in his majesty's name, with the Six Nations. In

these instructions, it is stated, "that nothing may be wanting to convince the Indians of the sincerity of our intentions, you will do well to examine into the complaints they have made of being defrauded of *their lands*; to take all proper and legal methods to redress their complaints, and to gratify them by reasonable purchases, or in such other matters as you shall find most proper and agreeable to them for such *lands* as have been *unwarrantably* taken from them, and for such other as they may have a desire to *dispose* of." In June, 1754, pursuant to these instructions, commissioners met at Albany, from the provinces of New York, New Hampshire, Massachusetts, Rhode Island, Connecticut, Maryland, Pennsylvania, and Virginia. Hendrick, in behalf of the Six Nations, told the commissioners, "that the governors of Virginia and Canada were both quarrelling about lands which belonged *to them*." The commissioners replied to them, and said, "We gladly understand that you gave no countenance to the French, who went to the Ohio, and have entered on *your lands*. You did put this land under the king our father, and he is now taking care to preserve it *for you*. For this end, among others, he has directed us to meet you here; for, although the land is under the king's government, yet the property or power of selling it to any of his majesty's subjects, having authority from him, we always considered as vested in you. We ever did and still do acknowledge it to belong to you, although within your father, the king of Great Britain's dominion, and under his protection!" A treaty of alliance and defence was, at that time, made with the Six Nations.

In allusion to this treaty, the governor of Pennsylvania, in his address to the assembly of that state, says, "From the proceedings at the late treaty of Albany, you will clearly perceive, that the lands on the river Ohio do yet belong to the Indians of the Six Nations, and have long since been put under the protection of the crown of England."

In April, 1755, general Braddock sent instructions to the superintendent of Indian affairs of the king, in which, after mentioning that the Five Nations, in 1701, had put their lands also under the same protection, to be protected and defended by the said king, his heirs and successors, to the use of the tribes and their successors for ever, he adds, "You are in my name to assure the said nations, that I am come by his majesty's order to build such forts as shall protect and secure the said lands to them, their heirs and successors for ever."

In the memorial delivered by the British minister to the French negotiator in 1755, (June,) he says, "Whatever pretext might be alleged by France, in considering these countries as the appurtenances of Canada, it is a certain truth, that they have belonged, and, as they have not been given up or made over to the English, belong still to the same Indian nations. What the court of Great Britain maintains, what it insists upon, is, that the Five Nations of the Iroquois are, by origin or by right of conquest, the lawful proprietors of the river Ohio, and the territory in question."

In May, 1755, sir William Johnston said to the Six Nations, "Agreeably to the instructions I have received from the great

king, your father, I will reinstate you in the possession of your lands." And again, in February, 1756, "The king will protect your country, and the lands which your fathers conquered, and are of right your territories, against all violence."

In August, 1760, lord Amherst assured the Six Nations, "that their lands should remain their absolute property."

In 1762, the commanding officer at fort Pitt prohibited, by proclamation, any of the subjects of the king from settling west of the Alleghany mountains, that country having, by the treaty at Easton, in 1758, been allowed to the Indians for their hunting grounds.

In 1763, a royal proclamation was issued, restraining the governor of Virginia from making grants west of the Alleghany mountains, because that country, not having been ceded to or purchased by the crown, was reserved to the tribes of Indians, who lived under the protection of the king, as their hunting ground.

I will not detain the committee by quoting from the proceedings at what was called the Congress of Fort Stanwix, in 1768; from the opinions of the learned in the profession in England, of Dr. Franklin, Patrick Henry, judge Pendleton, and Mr. Mercer, on the operation and effect of the grant from the Six Nations to William Trent, and of the *ratification* of that grant by the crown, by the treaty at fort Stanwix. It may be remarked, however, that all these distinguished men agreed in opinion, that the title of the Indians was one which could not be disturbed without their consent; and some of them supposed their power to convey was *absolute*, both as to the manner and the grantees, as an incident to their right of property in the soil.

The treaties made between Great Britain and the Chickasaw and Choctaw Indians, at Mobile, in 1765, and the Upper and Lower Creeks, at Pensacola, in May and November, 1765, all recognise the same right in these tribes, which has heretofore been stated: boundaries are established, and all the lands not embraced within the limits which include what the Indians reserve to themselves, and which are declared, in these treaties, to belong to them, and in which they have full right and property, are granted and confirmed to the crown.

It may safely be affirmed, that in no instance did the crown of England ever *claim*, in practice, a right by discovery, but only by purchase, to interfere with the Indian title of occupancy, as before explained. It admitted, in the fullest extent, the necessity of extinguishing it, before the Indians could be deprived of their lands; and, in all their acts, whether in the form of instructions, proclamations, laws, or treaties, acknowledged the title of the aborigines, and claimed only the exclusive right of purchase, and the ultimate reversionary right in fee.

Such being the relative situation of the crown and the Indian tribes, as to the lands occupied by them, let me now call the attention of the committee to the acts and declarations of the *colonies* and *states*, particularly *Georgia*, and it will be seen that the same principles were adopted, the same rights conceded to the

Indians, and the same interest asserted to exist in the colonies and states.

In June, 1779, the assembly of Virginia resolved, that the commonwealth had the exclusive right of *pre-emption* from the Indians within the limits of its own chartered territory, and that such exclusive right of pre-emption would and ought to be maintained by the commonwealth to the utmost of its power. This is all the right which they asserted and claimed.

In 1733, Oglethorpe, the founder of Georgia, made a treaty with the Lower Creeks, in which he obtained cessions of lands from them, and in which it is declared, that, though the lands belong to them, (the Indians,) they will permit the English to use and possess a part of them, and that the rest should remain to the Creeks for ever.

In 1738, he made another treaty with the assembled estates of all the Lower Creek nations, in which substantially the same provisions were inserted.

In 1783, another treaty was made with the Catawba, Cherokee, Choctaw, Chickasaw, and Creek nations, in which cessions of land were made; and, in May, 1773, another treaty was made with the Cherokee and Creek nations, by which boundaries were established, and cessions made by the Indians.

In 1777, a treaty of peace was made between South Carolina and the Cherokees, to which Georgia was a party, in which the commissioners of both states and the Cherokees exchanged their respective full powers, in which a cession is made by the Cherokees of all the lands east of the Unacaye mountain, to the state of South Carolina, as having been acquired and possessed by that state by conquest; and, in the 8th article, it is declared, that the hatchet shall be forever buried, and there shall be a universal peace and friendship re-established between South Carolina, including the Catawba, and Georgia on the one part, and the Cherokee nation on the other; there shall be a general oblivion of injuries; the contracting parties shall use their utmost endeavors to maintain the peace and friendship now re-established; and the Cherokees shall, at all times, apprehend and deliver to the commanding officer at fort Rutledge, every person, white or red, who, in their nation or settlements, shall, by any means, endeavor to instigate a war by the Cherokee nation, or hostility or robbery by any of their people, against or upon any of the American states or subjects thereof. Can Georgia enter into a treaty with her *own citizens?* give *peace* to those who are not enemies, but traitors?

In 1783, another treaty was made, between the state of Georgia and the Cherokee nation, by which peace was established, and a permanent boundary fixed.

It is unnecessary to go farther. The acts of Georgia furnish unequivocal evidence of her acquiescence in the doctrine, that the Indian tribes within her territorial limits, *of right*, might maintain the unmolested occupation of their lands. I will now advert to the acts and declarations of the *confederated* states; and it will be seen that they entirely coincided, on the subject of the Indian title,

with the principles assumed and acted on by the crown and the colonies.

In January, 1776, Congress resolved, that no person shall be permitted to trade with the Indians, without license from one or more of the commissioners of each respective department.

In September, 1783, a proclamation was issued by the United States in Congress assembled, prohibiting all persons from making any settlements on, or purchasing any lands inhabited or claimed by the Indians without the limits or jurisdiction of any particular state; and declaring all such purchases, without the express authority of Congress, void.

In October, 1783, Congress resolved, that a convention be held with the Indians in the northern and middle departments, for the purposes of receiving them into the favor and protection of the United States, and for establishing boundary lines of property.

In March, 1785, Congress resolved, that a commission be opened for treating with the Cherokees and all other Indians southward of them; and, in June, 1786, Congress directed the commissioners, who were to hold this treaty for the purpose of obtaining from them a cession of lands, to make such cession as extensive and liberal as possible.

In August, 1786, Congress passed an ordinance for the regulation of Indian affairs, the preamble of which states, that the safety and tranquillity of the frontiers of the United States depend, in some measure, on maintaining a good correspondence between *their citizens* and the several *nations* of Indians. This ordinance regulates the intercourse with the tribes.

In November, 1785, the treaty of Hopewell was made. Its provisions need not be referred to.

It will be seen, that all the acts of the Continental Congress were predicated on the assumed basis, that the Indian tribes had a just and legal right to the occupancy of their lands, indefinitely, and that the only subsisting right of the government to them, was what has been heretofore stated—the exclusive right of purchase, and the ultimate, contingent right in fee.

But the proceedings of the government, after the adoption of the constitution, if valid, put an end to every question regarding the title of the Indians. In the treaty of Holston, made with the Cherokees in 1791, the seventh article provides, that the United States solemnly guaranty to the Cherokees all their lands not thereby ceded. When this treaty was transmitted to the Senate, it was referred to a committee, consisting of Mr. Hawkins of North Carolina, Mr. Cabot of Massachusetts, and Mr. Sherman of Connecticut, who reported, among other things, that they had examined the treaty, and found it strictly conformable to the instructions given by the President of the United States, and that those instructions were founded on the advice and consent of the Senate, and that the Senate advise and consent to the ratification of the treaty. Various other treaties with the same, and with other tribes, contain a similar provision; and if these treaties have any binding force, it is needless to inquire, what were the rights of the Indians before the conclusion and ratification of these treaties, or what

were the rights of the government. These solemn compacts contain a promise of security in possession of their lands, and give them a title, if they had not one before. How far it was competent for the United States to enter into these stipulations, I shall not, in this stage of the discussion, inquire. That I shall consider, when I refer to them, as proving that the states are excluded from making any legislative enactments to effect them.

I have now considered the nature and extent of the Indian title, as recognised by the crown, the colonies, the states, the Continental Congress, and the United States, since the adoption of the constitution. On the subject of this title, it only remains for me to show, as I promised to do, that the title, as thus acknowledged, has received the sanction of the judicial department of this government.

In Fletcher *vs.* Peck, (6 Cranch, pp. 142, 3,) it is said, "The majority of the court is of opinion that the nature of the Indian title, which is certainly to be respected by all courts, until it be legitimately extinguished, is not such as to be absolutely repugnant to seisin in fee on the part of the state." Here is a complete recognition of *a title;* it is not absolutely repugnant to the idea that the state may be seised in fee; because the state has the ultimate dominion, the right expectant upon the determination of the state in the Indians: so long as the Indians occupy, the right of the state is dormant; it cannot be exercised. It is only in the event that the occupancy ceases, or the right to occupy becomes extinct, that the ultimate right of the state can be enforced. Judge Johnson, in the same case, (pp. 146, 7,) says the Indians have the absolute proprietorship of the soil. "The uniform practice of acknowledging their right of soil, by purchasing from them, and restraining all persons from encroaching upon their territory, makes it unnecessary to insist upon their right of soil."

But it was reserved to the court, at a later period, to give this subject a great degree of attention, and to investigate, ascertain, and declare the nature and extent of the Indian title. This was done in 1823; and the case of Johnson *vs.* M'Intosh (8 Wheat.) furnishes us with the result. In that case, the chief justice, delivering the opinion of the court, says, "The original inhabitants were admitted to be the rightful occupants of the soil, with a legal as well as just claim to retain possession of it, and to use it according to their own discretion. While the different nations of Europe respected the right of the natives as occupants, they asserted the ultimate dominion to be in themselves, and claimed and exercised, as a consequence of this ultimate dominion, a power to grant the soil, while yet in the possession of the natives. These grants have been understood by all to convey a title to the grantees, subject only to the Indian right of occupancy. It has never been doubted that either the United States, or the several states, had a clear title to all the lands within the boundary line described in the treaty, subject only to the Indian right of occupancy, and that the exclusive power to extinguish that right was vested in that government, which might constitutionally exercise it." "It has never been contended, that the Indian title amounted to

nothing. Their right of possession has never been questioned. The claim of government extends to the complete ultimate title, charged with this right of possession, and to the exclusive power of acquiring that right."

After these adjudications, confirmatory of all previous practice, legislation, and treaties, and giving to that practice the solemn sanction of the united opinion of the bench of the supreme court, can it be doubted, that the title of the Indian tribes to the lands they occupy is *practically* as complete, perfect, and absolute, as that of any citizen of this country to the farm on which he lives, and which has descended to him, after having been in the occupation of father and son, from generation to generation? Can the opinions and statements advanced in the report be sustained? "That the pretensions of the Indians to be owners of any portion of the soil were wholly disregarded by the crown of England;" "that, where there was reservation of any part of the soil to the natives, they were left to be disposed of as the proprietors thought proper;" "that one of the *expedients* of the colony was" merely "to *appear* to do nothing which concerned the Indians, either in the appropriation of their hunting grounds, or controlling their conduct without their consent; that this was the general principle of action; and that, in all the acts, first of the colonies, and afterwards by the states, the fundamental principle, that the Indians had *no rights* by virtue of their ancient possession, either of soil or sovereignty, has never been abandoned, either expressly or by implication;" "that the Indian boundaries, defined by treaties, were merely *temporary*; that the practice of buying Indian titles is but the substitute which humanity and expediency have imposed, in place of the sword, in arriving at the *actual enjoyment* of property, claimed by the right of discovery, and sanctioned by the natural superiority allowed to the claims of civilized communities over those of savage tribes;" "that the principle was adopted, that they had no *permanent* interest in their hunting grounds;" "that treaties were but a mode of government, and a substitute for ordinary legislation, which were from time to time dispensed with;" "that the tribes were *indulged* in the 'partial' enjoyment of their ancient usages;" "that the essential point in the policy of Georgia was, that the Indian reservations should be gradually contracted within such reasonable limits, that no part of the country should continue uncultivated; that her policy, in this respect, was a part of her *rights*, and that any thing which tended to defeat its operation was a deprivation of right." I will pursue these quotations no farther. They are negatived by history, by authenticated records, by universal usage, by legislative acts, and by judicial determinations.

Having thus disposed of the question, what is the nature and extent of the title of Indians to the lands which they occupy; and having shown, I hope, that it is one which, for all *practical* purposes, is *absolute*, and limited only by the right of the general government, of exclusive purchase, and of the reversionary

interest in fee; I proceed to inquire into and answer the question, Have the states, in which these tribes reside, the power to extend their legislative enactments over them, and thus to abolish, among these tribes, the power of self-government, and the laws, usages and customs, by which their affairs, from time immemorial, have been regulated? If I do not very much mistake, an examination of this subject will result in an entire conviction, that no such power has ever existed, nor does any such power now exist.

The advocates of this power insist upon the right claimed and possessed by the crown to exercise it while the United States were colonies; that, by the declaration of Independence and the treaty of peace, this power, this right of sovereignty and legislation, was transferred to the states, as sovereign, independent communities; that it has never been surrendered by the states to the federal government, but is rather guarantied and secured to them by the constitution under which that government is founded.

I take the liberty to say, that, in my opinion, but one of these propositions can be sustained, and even that is by no means free from doubt. I refer to that which assumes that the rights of sovereignty and legislation (whatever they were) became *vested* in the *states individually*, upon their becoming independent of the crown. To say the least, it might be contended with some plausibility, that these rights became vested in the *confederated union* first, and afterwards, in the government formed under the constitution, rather than in the *individual states*. Hence the cautious remark of chief justice Marshall, (8 Wheaton, 585,) "It has never been doubted that either the United States, *or* the several states, had a clear title to all the lands within the boundary lines described in the treaty, subject only to the Indian right of occupancy, and that the exclusive power to extinguish that right was vested in *that government, which might constitutionally exercise it*." Hence the conflicting claims of the United States, and the individual states, to unappropriated lands, which were finally adjusted by cessions from the latter to the former. But I do not propose to agitate or discuss that point. My attention will be directed to the other propositions necessary to be sustained by the advocates of the rights of the states.

If the crown had a lawful right to exercise jurisdiction over the Indian tribes without their consent, it must have been derived either from *discovery* or *conquest*.

As to the latter, (the right by *conquest*,) it is very obvious that it has no application to these tribes. There are two reasons which would seem to be conclusive on the subject. One is, that no *conquest* was ever made of them; but if there ever was a right by conquest, it is very clear, that it was surrendered by the crown, in the treaties which were made with them. In these compacts, the Indians were regarded as possessing the power to make them; they were treated as lawful and necessary parties to them; their claim to territory was acknowledg-

ed; boundaries were fixed; and pledges given that no interruption, no interference with their respective territorial limits, as settled by these treaties, should be allowed. To assert an unlimited right of sovereignty and legislation in the crown, by the force of *conquest*, is utterly inconsistent with the admitted necessity that the Indian tribes should conclude treaties with the crown, with the circumstances under which they were made, and with their explicit provisions: hence the Supreme Court say, after speaking of the wars between the whites and the Indians, that the law which regulates, and ought to regulate in general, the relations between the conqueror and conquered, was inapplicable to these Indian tribes. The resort to some new and different rule, better adapted to the actual state of things, was unavoidable. The one adopted was, as the Indians receded, the lands which they thus left unoccupied were parcelled out and granted by the crown; and as to those of which they retained possession, the Indians residing on them were to be considered as occupants, to be protected while in peace, but to be deemed incapable of transferring the absolute title to others.

As to the existence of this right, as emanating from *discovery*, it is contradicted by the best writers on international law, by the opinions of the most distinguished lawyers and statesmen of Great Britain and this country, and has been repudiated by the Supreme Court of the United States.

The rights acquired by discovery, on the part of the nation making it, are, simply, the exclusive right to make purchases of the native tribes; to make settlements, and to occupy in pursuance of purchases when made; and an ultimate right in fee, whenever the title of the Indians shall become extinct: and even these rights may be considered as peculiarly and solely confined to the relations subsisting between this country and the aboriginal inhabitants, and do not exist, and are not applicable to the case of any other community of native tribes. —What is called the sovereign power of the nation discovering the country, consists in the particulars above mentioned. This attribute of sovereignty, the sole right of purchase, and the ultimate ownership in fee, grows out of the fact of discovery; and, so far as it exists, it takes so much from the sovereignty and independence of the Indian tribes. But the power to legislate, to extend its laws over the territory discovered, is confined to its subjects when they make purchases and settlements, and grows out of the obvious principle, that these subjects, purchasing, as they must, with the consent of their own sovereign, when they remove and occupy the lands purchased, carry with them the laws under which they previously lived, and in return for the protection which they receive, as continuing subjects of their sovereign, become amenable and subject to such legislative enactments as it may be deemed useful and expedient to make. The right to purchase is derived from the crown; the right to occupy from the purchase; and the subjection to the legislation of the crown, from the union of

these rights, connected with their national character, and the protection which the nation is bound to afford them. This power to legislate is a branch of the same power which can lawfully make any municipal regulation, a power over *its own subjects*, settled on territory purchased with its consent, and in regard to which it had the exclusive right of purchase.

Let me solicit the attention of the committee to the support which these positions derive from judges, lawyers, and statesmen.

In 1757, lord Camden, and Mr. Yorke, the king's attorney and solicitor general, officially advised the crown, that the grants to the East India Company were subject only to the king's right of sovereignty over the settlements as English settlements, and over the inhabitants as English subjects, who carry with them the king's laws wherever they form colonies, and receive his protection by virtue of his royal charters. Here the true principle of the right to legislate is clearly stated. It is derived from the fact, that the purchasers are English purchasers; that the settlements consequent on the purchase are English settlements, which form colonies, carry with them English laws, and receive protection by virtue of the patent from the crown; and this part of the opinion seems to have met with the approbation of the Supreme Court of the United States.

In 1755, counsellor Dagge, sergeant Glyn, Dr. Franklin, and Patrick Henry, gave written opinions in support of the same principles. The lands conveyed by the Indian tribes were taken by the grantees, and held, subject only to the king's sovereignty over the settlements to be established thereon, and over the inhabitants as English subjects. The transfer of the sovereignty to the crown of England was made by the same instrument whereby the land was conveyed, and was effectual to pass it; and the title is under the protection of the laws of England.

But it is not necessary to refer to English lawyers, or to times as remote as those just mentioned. The Supreme Court of the United States, whose decisions we ought to regard as sound expositions of the law, have told us, in language not to be misunderstood, what rights were acquired to this country by the discovery of it.

In the case of Johnson *vs.* M'Intosh, the court say, the principle adopted by the great nations of Europe, on the discovery of this continent, by which they should be mutually regulated, was, that discovery gave title to the government by whose subjects or by whose authority it was made, against all other European governments, which title might be consummated by possession. As a consequence, the nation acquiring the discovery obtained the right of acquiring the soil from the natives, and establishing settlements upon it.

The rights of the original inhabitants to complete sovereignty, as independent nations, were necessarily diminished. And why? Because they interfered with the fundamental principle,

that discovery gave exclusive title, ultimate dominion, subject to the Indian right of occupancy, to those who made the discovery.

The court say, the United States maintain, as all others have maintained, that discovery gave an exclusive right to extinguish the Indian title of occupancy, either by purchase or by conquest, and gave also a right to such a degree of sovereignty as the circumstances of the people would allow them to exercise; or, as it is called, a *limited* sovereignty over them. This sovereignty is not called absolute—unlimited—but a kind or degree of sovereignty limited and confined, and, when taken, as it should be, according to the subject matter, means nothing more than that it existed so far, and to such an extent, as was necessary to preserve inviolate the exclusive right of purchase; or, perhaps, as was said by judge Johnson, (6 Cranch, p. 147,) the only limitation of the sovereignty of the Indians was the right in the states of governing every person within their limits, except themselves. It may further be observed, that in no instance did the crown ever claim the right to legislate for the Indian tribes, except with their consent, and for their protection against the encroachments of the whites.

I have thus endeavored to show that the crown of England neither possessed nor claimed the right, as derived from discovery, conquest, or otherwise, to extend its laws over the Indian tribes. They were considered as distinct nations or communities, sovereign and independent, excepting that the right to alienate their lands at pleasure was denied to them; possessing and actually exercising the powers of government, through the medium of their own laws, usages, and customs. If this be so, then, by the declaration of independence and the treaty of peace, Georgia acquired no right to legislate over them, for the crown did not possess it; and, as was well observed by the Supreme Court, "Neither the declaration of independence, nor the treaty confirming it, could give the United States more than that which they before possessed, or to which Great Britain was before entitled."

Should it, however, be admitted, that the view thus far taken of this subject is incorrect; that the crown, while the states were colonies, possessed and exercised the unlimited right of sovereignty and legislation, and that the states succeeded to this right after the declaration of independence; I will ask the committee to follow me in an examination of this subject, under the constitution, and will endeavor to show, that, if the states had the power of legislation at any time, it was surrendered at the adoption of that constitution, and that that instrument contains a virtual prohibition to the states to extend their legislative enactments over the Indian tribes within their limits.

It should be premised, that the right to legislate over these tribes, if it exist, is in its nature indefinite and unlimited; for, as it has its foundation in the sovereign power of the state, that sovereign power extends to the enactment of all laws to effect the Indian tribes, which could lawfully be made to operate upon its white citizens. And this seems to be the doctrine assumed in

the report. The right to legislate is spoken of as growing out of the absolute sovereignty of the states within their territorial limits, and can of course have no limitation in respect to Indians, which it has not in regard to its *white* population. It must, therefore, be admitted, that, if a state can legislate, so as to affect the Indians at all, it can do so to the same extent, as over its own citizens.

This unlimited power of legislation cannot exist, without annihilating the Indian *title* to their lands. I have heretofore attempted to show what was the nature and extent of that title; a right to use and occupy forever; not to be defeated by *legislation*, but by cession or conquest only; and that this title was not acquired by permission, by treaty, by reservations; but by the *original* right of *occupancy*. What becomes of the enjoyment of this right, if a state can lawfully do as Georgia, Mississippi, and Alabama have done—pass laws, abolishing and declaring null and void all laws, ordinances, orders, regulations, usages and customs of the Indian tribes within their limits? Cannot these states alter the mode of descent, the regulations of alienation, the rights of possession, as known and practised by the Indians? Cannot they impose taxes, and subject their lands to the payment of them? Cannot they make legislative enactments, the necessary and inevitable effect of which will be to drive the Indians from the occupation of their territory? Did not the secretary of war foresee this consequence, when he stated to the Cherokee delegation, that, in consequence of the power of Georgia to extend her legislative enactments over this nation, the only remedy for the nation was a removal beyond the Mississippi, where alone could be assured to it protection and peace; that, while the tribes continue within the territorial limits of an independent state, they could promise themselves nothing but interruption and disquietude; that beyond the Mississippi there would be no conflicting interests; there the United States could say to them, The soil shall be yours while the trees grow or the streams run; but, situated where you now are, no such language can be held to you? What is the meaning of all this, but that, being subjected to the legislation of Georgia, the occupancy of their territory would be disturbed; and that the consequence of their residing within the limits of a sovereign state would eventually be extermination? Let me read to the committee an extract from the speech of a distinguished senator from Mississippi, lately deceased, (Mr. Reid,) which I shall have occasion to use for another purpose hereafter, delivered in the Senate of the United States, in 1826: "He was entirely persuaded that so long as the tribes of Indians within any state of the Union were exempted from the operations of state laws, they never would consent to remove from the territory they occupy: until our legislation can, in some form or other, be brought to act on these people, or those resident among them, they will never consent to abandon their lands. So soon as our laws can reach those abandoned citizens, who settle among them, and become as savage as the Indians themselves, a powerful motive for their con-

tinuance will be removed. It is a first step in a system of removal; it is the first step in any system tending to a change of residence."

If one of the principles advanced in the report be correct, and the Indian title to their *lands* be what I have stated it to be, it wholly excludes state legislation. The committee say, speaking of the law of the state of New York, "It was not understood as introducing any new principle. It recognised the general principle, that territory and jurisdiction, considered in reference to a state or nation, are inseparable; that one is a necessary incident to the other; and that, as a state cannot exist without territory, the limits of that territory are, at the same time, the limits of its jurisdiction." Here the fundamental principle is asserted, that soil and jurisdiction are inseparable from each other; that the right to the soil in a state, *ex vi termini*, includes a right of sovereignty or jurisdiction over it. Let an application be made of this doctrine to the Indian title. It has been shown, that the title to the territory which they occupy, as against the state of Georgia, is practically an *absolute* title, and by the United States it has been solemnly guarantied to them. If so, then the attribute of sovereignty, said to be necessarily incident to the right of soil, attaches to it; for it can hardly be claimed, that what is a correct rule, as applied to civilized nations, ought not to be applied to the Indian tribes. It would seem, therefore, to be a necessary consequence, from the positions taken in the report, that the Indians possess the right of sovereignty over their lands, if they are the owners of the lands; and I have endeavored to show, in a former part of this discussion, that they are the owners of the soil, for every practical purpose of absolute ownership.

Another objection to the right of legislation, by the states, is derived from its *non user*, (if the expression may be allowed,) by Georgia, at *all times*. It is now more than fifty years since the declaration of independence, and more than forty since the adoption of the constitution; and, until within a little more than a year, no such right was ever *claimed*. Whence this silence? Whence this acquiescence in the legislation of the federal government? Whence the repeated and reiterated demands upon the government to extinguish the Indian title? Does the doctrine so lately advanced, of state sovereignty, comport with the language of the report, that "it is understood Georgia will not attempt to appropriate the lands within the Indian reservations without their consent?" Does it not look to the operation of state laws as a sure and speedy mode of extinguishing *actual* occupancy, if not of title? Has it not this for its object? For what *other* purpose can the state desire to legislate over them? Not to draw *revenue* from them; not to subject them to the performance of civil or military duties; not to make them citizens, and amalgamate them with their white population. The state can have no such objects in view. Can any other motive be assigned, than *indirectly to force* them to remove, by bringing the action of legislation to bear upon them? If such be the object, if the power existed, why was it never before claimed or exercised? Why was the

federal government to extinguish the title, to purchase the right of occupancy? Can this long acquiescence, on the part of Georgia, in the exercise of self-government by the Cherokees, be accounted for in any other way than by a full admission that the *right* so to exercise it belonged to that tribe?

If the power of legislation exists, how are these Indians to be regarded? as citizens, aliens, or denizens? Not as *citizens*, it would seem; for the law already passed nearly *outlaws* them. It does not, indeed, declare them incompetent to sue as plaintiffs in the courts of Georgia, but it has all the *practical* consequences of *outlawry;* for they are deprived of the benefit of the only testimony which would generally exist, to sustain their legal rights. Not only no Indian can testify for another, where a white man, not residing in the nation, is the adverse party, but no *descendant* of one, however remote, is a competent witness. The rights of personal security, personal liberty and private property, so far as it regards the Indians, are, by this law, *practically annihilated.* It is clear they are not *aliens*, residing within the jurisdiction of the states; for if so, *whose subjects* are they? They are not denizens; for a state cannot make them such. They have not been made citizens by naturalization; for a state cannot make them such, in that manner. If, then, they are subject to the municipal regulations of the state, it is because they are, and from the period of the declaration of independence have been, *citizens* of the state. If citizens, they may be prosecuted for all offences for which the whites may be prosecuted—bigamy, treason, &c. &c. If citizens, they are to be *enumerated* in the census, and to form a part of the basis of representation, *if taxed.* Now, did the framers of the constitution ever suppose, that, by exercising the power of taxation, the whole of the Indian tribes within the limits of the states, could be represented on the floor of Congress? Would Georgia have a right to send one of the chiefs, or head men of these tribes, as a representative or senator to the national legislature? The Old Congress did not think so, when it was provided, in the treaty of Hopewell, that the *Indians* should have the right to send a deputy of *their* choice, whenever they should think fit, to Congress. They never were, at any time, considered subjects of Georgia; but if they are now, they always have been, since July 4, 1776; and a new basis of representation is to be made after the year 1831, for the states within whose limits Indian tribes reside. The law of Mississippi, if a valid one, has completely effected this object; for, while it abolishes the laws and usages of the Indians, it confers on them the rights of citizens, and subjects them to the operation of all the laws, statutes, and ordinances of the state; and the 23d Congress will, perhaps, have one additional representative from Mississippi, by force of this legislative enactment.

The power to extend the municipal regulations of the state of Georgia over the Indians, if it ever existed, is taken away by the constitution, and cannot now, consistently with the provisions of that instrument, be exercised.

I suppose that it will be admitted, that the state, by adopting

the constitution, is bound in good faith, by its provisions, and cannot claim to exercise any rights which, by that instrument, are conferred exclusively on the general government, or prohibited to the state. A denial of this principle would, of course, be a denial of any paramount authority of the constitution, and reduce the government to what it was under the articles of confederation.

By the constitution, Congress have power to "regulate commerce with foreign nations, and among the several states, and with the Indian tribes." Whatever the *extent* of this power may be, so far as it exists, and may be lawfully exercised, it is *exclusive*. It must necessarily be so; for, if it exist both in the states and in the federal government, it becomes nugatory in the hands of either. The regulations of the state and of Congress might conflict with each other; and which is to yield? Neither, if the power may be exercised by both. This point has, however, been settled by the Supreme Court. That tribunal has decided, that the power given to Congress, under this clause of the constitution, is exclusive, and amounts to a prohibition to the states to exercise it.

I shall not stop to comment upon the suggestion, that it is not said Congress shall have power to regulate commerce with the Indian tribes *within* the states, for the expression is general: it is made to extend to all Indian tribes, and must include those within, as well as those without, the territorial limits of a state. But there were no Indians in the United States who were not, at the time of the adoption of the constitution, within the territorial limits of some state. Such has uniformly been the construction of this clause of the constitution, and it has received the sanction of the Supreme Court.

This power, in my opinion, forbids all control over the Indian tribes within the limits of Georgia, through the medium of her laws. It was, I think, so *intended*, and must of *necessity* be so.

By the articles of confederation, it is provided, that "the United States, in Congress assembled, shall have the sole and exclusive right of regulating the trade, and managing all affairs with the Indians, not members of any of the states, *provided that the legislative right of any state within its own limits be not infringed or violated*;" and, in the ordinance of 1786, this legislative right was expressly adverted to and recognised. When the constitution was framed, this proviso was purposely omitted. It does not appear in that instrument; and it is to be recollected, that some of the distinguished men, who signed the articles of confederation, also affixed their signatures to the constitution, and were members of that Congress which enacted the first intercourse law after its adoption, July 22d, 1790; continued by acts of March 1, 1793; May 19, 1796; March 3, 1799; and made perpetual by act of March 30, 1802. In the fifth section of the act of 1790, a provision is made, which evinces most clearly that the Indians were not considered as within the jurisdiction of any state; for it provides for the punishment of citizens, or inhabitants of the United States, who commit crimes in the Indian territories, in the same manner as if the offence had been committed within the jurisdiction of the state

of which they were inhabitants or citizens. The same provision is to be found in the 4th section of the act of March, 1793. And in the first act, sales to states are declared void, though they have the pre-emptive right, unless at a public treaty held under the authority of the United States.

It would seem, from these facts, no other inference could be drawn, than that the framers of the constitution supposed they had effectually excluded state legislation over the Indian tribes: else why omit in the constitution what was inserted in the articles of confederation less than ten years preceding, and which must have been known, understood, and well considered, by the convention in 1787,—the reservation of the legislation of the states. And why, in the first law that was made, in execution of the power given to Congress, was it necessary to provide for the punishment of crimes, committed on lands belonging to the Indians, declared to be out of the jurisdiction of the states, if they possessed jurisdiction? Contemporaneous exposition is generally a safe rule, both in the construction of constitutional and statute law, and, if it be applied here, establishes the principle, that the states had no power of legislation over the Indian tribes within their limits.

But let it be examined in another point of view. The proviso before referred to, in the articles of confederation, may have been inserted, out of abundant caution, to prevent any inference, that the right of the states to legislate, on other subjects than the intercourse with and affairs of the Indians, was abridged or taken away; for it would have been absurd to have granted to Congress the sole and exclusive power of regulating the trade, and managing all affairs with the Indians, not members of a state, and then to have added a proviso which would have effectually prevented them from the exercise of that power. In this view, the treaty of Holston, of 1785, is binding under the clause of the constitution, which provides that all debts, contracts, and engagements, entered into before the adoption of this constitution, shall be as valid against the United States, under this constitution, as under the confederation. But the power to regulate commerce with the Indian tribes not only was *intended* and *believed* to have excluded state jurisdiction over them, but such is the necessary consequence of the grant of the power. It has been before stated to be exclusive, and, of consequence, it denies to the states the exercise of jurisdiction in the regulation of commerce with the tribes. But a want of power to regulate commerce or intercourse with them, is a want of power to affect them, in any manner, by legislative enactment. The very circumstance, that intercourse may, and must be had with them in some form, is conclusive, that they are considered and to be treated as a community distinct from our own citizens. Now, how can a state legislate over a body of men, with whom they are prohibited from having any intercourse, except under regulations prescribed by Congress? There is no subject; there is neither territory nor person, on which legislation can act. If Georgia can of right pass a law which operates upon the tribes, she can enforce it; for it is idle to talk of the right to

extend its laws to them, if there is no constitutional power to carry them into effect. A right to make and a right to enforce a law must co-exist in the same body. They cannot be separated. Can a law be executed in a territory where an entry on it cannot be made without the assent of a power distinct from that which enacts the law? Let this question be answered, by a reference to the law of Georgia, approved by the governor, December 19, 1829.

The 6th section extends the civil and criminal laws of that state over the Cherokees, and subjects them to the legal process of its courts. The 7th section abolishes all their laws, ordinances, orders and regulations. Suppose the Cherokees refuse a compliance with these statute provisions; how is the state to enforce them? If process is issued, can the ministerial officer go into their territory to serve it? What says the intercourse law of March, 1802, sec. 3? "If any citizen of a state or territory, or other person, shall go into any country which is allotted or secured by treaty to any of the Indian tribes south of the river Ohio, without a passport," obtained in the manner specified in the act, "he shall forfeit a sum not exceeding fifty dollars, or be imprisoned not exceeding three months." Would the *process* of the state of Georgia alone be a protection to an officer who should go among the Cherokees to execute it? Would it save him from the penalties of this section of the intercourse law? Would it be "a good plea in bar," to an action of debt to recover the penalty, or to an indictment for the offence? Suppose the laws of Georgia to authorize the assessment of a tax upon the Cherokees; could the tax-gatherer go into their nation and take their property, to satisfy it? Look at the fourth section of the act of 1802: "If any citizen, unauthorized by law, and with a hostile intention, shall be found on any Indian land, such offender shall" be subject to a pecuniary forfeiture, and imprisonment, and, "where property is taken, shall pay for it twice its just value." Would the law of Georgia save him from these penalties and forfeitures? Would it be an available defence, in suits brought to recover and enforce them? The 12th section of the law of Georgia makes it murder to take the life of any Indian residing within the chartered limits of Georgia, for enlisting as an emigrant, &c. contrary to the laws and customs of the Cherokee nation. Should there be a violation of this section, and its penalty exacted, which is death by hanging, what would be the consequence? Turn again to the intercourse act, sec. 6: "If any citizen or other person shall go into any town, settlement, &c. belonging to any nation or tribe of Indians, and shall there commit murder, by killing any Indian, &c. he shall suffer death." Would the warrant of execution, issued under the law of Georgia, be a justification? Would this be an available "plea in bar?"

Is this intercourse law one made in pursuance of the constitution? If it is, it is the supreme law of the land. Let me then inquire, what is the meaning of the expression, "commerce with the Indian tribes?" The Supreme Court have given an

explanation of the phrase. They say, "Commerce undoubtedly is traffic, but it is something more; it is *intercourse*." As used in the constitution, "it is a unit, every part of which is indicated by the term. It cannot stop at the exterior boundary line of each state, but may be introduced into the interior. In the regulation of trade with the Indian tribes, the action of the law, especially when the constitution was made, was chiefly within a state. The power of Congress, then, whatever it may be, must be exercised within the territorial jurisdiction of the several states." What is this power? "It is the power to regulate, that is, to prescribe the rule by which commerce is to be governed. It is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the constitution. It is vested in Congress, as absolutely as it would be in a single government, having in its constitution the same restrictions on the exercise of the power, as are found in the constitution of the United States. As it implies, in its nature, full power over the thing to be regulated, it excludes, necessarily, the action of all others that would perform the same operation on the same thing." The power, then, given to Congress, is to prescribe the rule by which intercourse with the Indian tribes shall be governed, and excludes the action of all others. Now, can a state legislate over a territory, or a people, where both these subjects of legislation are within the exclusive control of Congress, so far as the constitution and treaties have given this control? What kind of legislation is that, which is made to operate upon a community, with whom the law makers are not even permitted to have any intercourse? It seems as though it were impossible successfully to contend, that tribes of Indians could be brought under state laws, when they are without the reach even of ordinary commerce with the states.

But another view may be taken of this part of the subject. The right to regulate intercourse with the Indian tribes includes a right to prohibit it altogether, or to place it under certain modifications, as the intercourse law of 1802 does. Now, Congress have exercised the power to prohibit commerce or intercourse with foreign nations: they did this when the embargo and non-intercourse laws were passed. These laws have been adjudged valid by the highest judicial tribunal in the country. Now, if, under the clause which gives to Congress the right to regulate commerce with foreign nations, all intercourse may be prohibited, surely the same thing may be done, as it relates to the commerce with the Indian tribes. And a power to prohibit all intercourse is a power which excludes state legislation; for a state law cannot be executed where there is no lawful right to enter into the Indian territory to enforce it.

But let us examine this clause a little further. It is very obvious, that the framers of the constitution supposed that the Indian tribes were a community distinct from the ordinary citizens of a state. They provided for the regulation of commerce with foreign states, between the states, and with the Indian tribes, that is, with a people not foreigners, not members of

the Union, but distinct from them, called tribes. They did not profess to regulate intercourse between citizens of the same state. If, however, the states, by virtue of their sovereignty, can legislate over the Indians, it is because they are members of their community, citizens, persons living within their jurisdiction; and thus the power given to Congress to regulate trade with them is annihilated. They are no longer tribes; they lose that distinctive character and appellation, when they are claimed to be members of the state; and thus this clause in the constitution is a dead letter; it means nothing.

One observation further on this part of the subject. The consent given by the states, in the constitution, that Congress shall have the exclusive power of regulating the trade with the Indians, is a virtual admission, that they are not citizens or inhabitants of the states. They are not only called tribes, but are treated as distinct communities, not incorporated with the states; not a part of their population. Can the United States regulate trade and intercourse with the citizens of a county or a town in any state? Can they make laws to govern a portion of the inhabitants of a state? They certainly can do it, if the Indian tribes are citizens of the states within whose limits they reside. It cannot, however, be seriously contended that the constitution has vested in Congress any such power, as that which would of necessity result, if the Indians are citizens of the states.

By the constitution, "power" is given to the President, "by and with the advice and consent of the Senate, to make treaties." This power is also *exclusive*, and, whenever lawfully exercised, supersedes all state legislation inconsistent with it; for by the same constitution it is provided, "that all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding."

In pursuance of the power thus given, what at least are *called* treaties, have been made with the southern Indians. I shall endeavor to show that these treaties, or by whatever name they may be called, contain provisions which exclude all legislation over them by the states within whose chartered limits they are located; and that these treaties are "the supreme law of the land."

The treaties with the Cherokees are those to which I shall refer; for it is from them we have had memorials soliciting protection from the legislation of Georgia; and those made with other tribes contain similar provisions.

That these treaties in terms, and in the fullest and most solemn manner, guaranty to them, forever, all their lands not ceded, is admitted. Any legislation, either of the United States or the states, which would *deprive them of their possessions*, would, of course, be an infraction of these compacts. No such legislation, (if the treaties are valid,) which would produce this effect, directly or indirectly, can be admitted. These propositions need no illustration nor argument to support them.

But not only is *this* species of legislation prohibited, but legislation in every form, and for any purpose, by the *states*, is equally prohibited.

The treaty of Holston, July 2, 1791, was the first one made with the Cherokees, after the adoption of the constitution; and the subsequent treaties are considered and declared to be additional to, and forming a part of, this treaty. Let me now ask the attention of the committee to several clauses in this treaty.

The Cherokees are placed under the *protection* of the United States, and of no other sovereign whatever: they stipulate not to hold any treaty with any individual state. The United States are vested with the sole and exclusive right of regulating their trade; they may punish at their pleasure any citizen of the United States who settles on their lands; all persons are prohibited from going upon their lands without a passport; they shall deliver up offenders guilty of certain specified crimes against the citizens of the United States, to be punished according to the laws of the latter; and offenders against them shall be punished as though the crimes had been committed within the territory and jurisdiction of the United States. And by the 5th article of the treaty of Hopewell, which in 1790 general Washington declared was in full force, and the provisions of which he felt bound to carry into faithful execution, the Indians are admitted to have the power to punish, at their discretion, and in such manner as they please, those settlers upon their lands, who will not remove within six months after the ratification of the treaty.

In the face of these treaty provisions and recognitions, can the states legislate over them? Can they exercise an authority over them, even for *protection*, when that power is confided to the United States? And what does *protection* imply? Merely security in the enjoyment of their lands? This term is *general*, and applies to all their then existing usages and customs. It is to be a protection against all who attempt to intermeddle with them. They have abjured the protection of all sovereignties but the United States. To them is confided the right to regulate trade. To them offenders are to be given up; by them offenders are to be punished. And the United States bind themselves to observe all these stipulations. How is it possible that a state can enact a law which shall operate, in a territory guarantied exclusively to the Indians, and over a community whose relations are declared to exist only with the United States, and whose *local* jurisdiction is admitted by these provisions to be exclusive of the federal government? And, now, in what light are these treaties to be considered with reference to the character of one of the contracting parties? Do they, or do they not imply and admit, the Indian tribes to be independent of, and not subject to, the control of the states; and do they possess any binding force?

Let us attend to the language of general Washington on this subject. On the 22d of August, 1789, he came into the Senate chamber, and asked the advice of the Senate, among other

things, on these two points; "Shall a solemn guaranty" be given "by the United States to the Creeks of their remaining territory, and to maintain the same, if necessary, by a line of military posts?" "If all offers should fail to induce the Creeks to make the desired cession to Georgia, shall the commissioners make it an ultimatum?" To the first question, the Senate answered in the affirmative; to the second, in the negative. On the 17th September, 1789, general Washington sent a message to the Senate, in which he states, that "it is important that all treaties and compacts, formed by the United States with other nations, whether civilized or not, should be made with caution and executed with fidelity." After speaking of the practice of the United States with European nations, not to consider any treaty as conclusive until ratified, and suggesting that the same course would be advisable in relation to treaties made with the Indians, he asks of the Senate their opinion and advice, whether certain Indian treaties were to be considered as perfected, and consequently as obligatory without being ratified; and if not, whether these treaties ought to be ratified? The Senate answer by adopting the following resolution: "Resolved, that the Senate do advise and consent that the President of the United States ratify the treaty." Can any language be more expressive of the opinion of the President and of the Senate, that these treaties were of the character contemplated by the constitution, requiring ratification, as made with a nation having the power to enter into them, and therefore as independent, having the power of self-government? And it is to be observed, that the practice, in regard to these Indian treaties, has been uniformly the same from that time to the present.

On the 11th of August, 1790, general Washington sent a message to the Senate, in which he asks the advice of the Senate, whether "overtures shall be made to the Cherokees to arrange a new boundary, so as to embrace the settlements made by the white people since the treaty of Hopewell;" and whether the United States should "stipulate solemnly to guaranty the new boundary, which may be arranged?" The Senate gave their advice by answering both these questions in the affirmative. It is to be observed also, that in this message general Washington explicitly states, that he shall consider himself bound to exert the powers intrusted to him by the constitution, in order to carry into faithful execution the treaty of Hopewell.

Let me now turn the attention of the committee to the opinions entertained by the distinguished men who negotiated the treaty of Ghent, speaking in the name of the government, and whose attention was particularly called to the subject by the British negotiators; and let it be remembered, that some of them, at least, were advocates of the rights of the states, and of what has been called, in modern times, a strict construction of the powers of the general government. These opinions unequivocally support the Indian tribes in their right to be governed by their own laws and usages. In their note to the British Commissioners, dated September 9th, 1814, they use the fol-

lowing language: "A celebrated writer on the laws of nations, to whose authority British jurists have taken particular satisfaction in appealing, after stating in the most explicit manner the legitimacy of colonial settlements in America, to the exclusion of all rights of uncivilized Indians, has taken occasion to praise the first settlers of New England, and the founder of Pennsylvania, in having purchased of the Indians the lands they resolved to cultivate, notwithstanding their being furnished with a charter from their sovereign. It is this example which the United States, since they became, by their independence, the sovereigns of the territory, have adopted and organized into a political system. Under that system, the Indians residing within the United States are so far independent, that they live under their own customs, and not under the laws of the United States; that their rights to the lands where they inherit or hunt, are secured to them by boundaries defined in amicable treaties between the United States and themselves; and that whenever these boundaries are varied, it is also by amicable and voluntary treaties. They are so far dependent as not to have the right to dispose of their lands to any private persons, nor to any power other than the United States, and to be under their protection alone, and not under that of any other power. Whether called subjects, or by whatever name designated, such is the relation between them and the United States. These principles have been uniformly recognised by the Indians themselves, in all the treaties between them and the United States."

I now invite the attention of the committee to the Cherokee treaty of July 8th, 1817, which was negotiated by the present chief magistrate of this nation, as one of the commissioners. And it is worthy of particular notice, that it was under the faith of this treaty, and one of the objects for which it was made, to enable the Cherokees to establish a government of their own, and adopt laws more in unison with republican principles than their former usages, and which laws and government the state of Georgia claims a right to abolish.

The preamble recites, that the upper Cherokee towns are desirous of contracting their society within narrow limits, that they may begin the establishment of fixed laws and a regular government; and for this purpose request a divisional line to be established between them and the lower towns; and, to carry into effect the before recited promises with good faith, the Cherokees make a cession of part of their lands to the United States. It is very obvious, that the only object of this treaty, and the cession made under it, was to enable the Cherokees who remained east of the Mississippi to institute a government and enact laws suited to their then condition. This object was well understood by the commissioners who negotiated, and by the President and Senate who ratified this treaty. As an inducement to effect this object, to them so desirable, they made large grants of their territory. They proceeded to establish their government and laws, to "engage in the pursuits of agriculture and civilized life," upon the faith of this treaty; and, eleven years afterwards,

they are informed by the President, who negotiated the treaty, and speaking in behalf of the government which ratified it, that they cannot be protected in the enjoyment of that government and those laws, but that the state of Georgia may lawfully abrogate both. Was this the view taken of their rights by the commissioners, and by the President and Senate, in 1817? Was it not conceded by them all, that the Cherokees had the right to institute a form of government and make laws for themselves, and that they should not be molested, but protected in the exercise of that right?

In July, 1787, Congress passed an ordinance for the government of the territory north-west of the river Ohio, the fourth article of which provides, that the "utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their *property, rights* and *liberty*, they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall, from time to time, be made for preventing wrongs being done to them, and for preserving peace and friendship with them."

In the cession by Georgia, in 1802, it is provided, that when the territory ceded by her shall be formed into a state, it shall be admitted as such into the Union, on the conditions and with the restrictions contained in the foregoing ordinance, except the article which forbids slavery.

In 1817, Congress authorized the inhabitants of the western part of the territory of Mississippi to form a state government, preparatory to her admission into the Union, with a proviso, that the constitution and government by them formed should not be repugnant to the before mentioned ordinance, and the provisions of the deed of cession by Georgia.

In the same year, Mississippi, having formed a constitution and state government, declared by Congress to be in conformity to the principles of the foregoing ordinance, was admitted into the Union.

In 1819, Alabama was admitted on the same principles.

From these acts, two very obvious inferences are to be drawn. The one is, that, in 1802, Georgia considered the ordinance of 1787, which secured the property, the rights, and the liberty of the Indians, as not only just and proper, but as one which the Continental Congress might lawfully make. The other is, that the states of Alabama and Mississippi are precluded by the acts authorizing them to form a government, and admitting them into the Union, from enacting laws which shall infringe upon the rights of the Indians.

In the Senate of the United States, in 1826, in the discussion of a bill making an appropriation for the repair of a post-road in the state of Mississippi, in answer to an objection, that the state ought to construct and repair its own roads, Mr. King of Alabama said, "The road runs through the Indian country, over which the state of Mississippi had no control."

Mr. Johnson of Kentucky said, this "was a road opened by the United States, according to a treaty stipulation with the United States."

Mr. Ellis of Mississippi said, "the road did not pass through one seventh part of that state, and it was impossible for the state government of Mississippi to have any authority over those lands, till the title to them was extinguished."

Mr. Eaton of Tennessee, the present secretary of war, said a treaty had been entered into between the United States and the Choctaw Indians. The question of state rights had not then arisen, and the government of this country was in the hands of Mr. Jefferson. Under such an administration, no attempt would have been made to enter into a treaty with a distinct sovereignty, that went to invade the principles of the constitution. "Ever since this government had existed," Mr. Eaton said, "they had proceeded on the principle that the Indians are a distinct sovereignty; it was an anomaly that one sovereignty should exist within the orbit of another; but they always had proceeded on this principle, and if they had any right to interfere with them, why did they proceed with them in the character of sovereignties?" Mr. Eaton contended that, "in the provisions of this treaty, there was no cession of property on the part of these Indians; there was not even a cession of sovereignty. They, in their sovereign capacity as Indians, yielded their consent to the United States to open a road. The United States could not give the state of Mississippi any sovereignty over it."

Mr. Berrien of Georgia, now attorney-general of the United States, said, "the moderate reflection he had been able to bestow upon this subject had reconciled his mind to the admission of the principle, that the effect of this treaty was certainly of limited extent. This treaty was concluded before the admission of the state of Mississippi into the Union, and the parties to that treaty, being considered as distinct sovereignties, might have imposed on the United States certain obligations; from which obligations they could not disengage themselves by any new compacts, entered into with the people of Mississippi, on their admission into the Union."

Mr. White, at present a senator from Tennessee, and chairman of the committee on Indian affairs, in a written opinion given in 1824, says, "these people (the Cherokees) are now to be viewed as a nation possessing all the powers of other independent nations, which are not expressly, or by necessary implication, surrendered up by this treaty, (the treaty of Holston.) I have believed, and still do, that under the treaties the Cherokees must be considered a nation possessing like powers with other nations, except so far as they have surrendered their independence to the United States."

Are these treaties, thus explained, *binding?* If they recognise and declare the Indian tribes, with which they are made, so far independent as to possess the right of governing themselves, by their own municipal regulations, as not to be subject to the legis-

lation of the states, and to have the sole right of occupancy forever to the lands described in the boundaries specified, are the treaties the supreme law of the land? Had the government of the United States the power to enter into and to ratify them?

It would seem to be somewhat novel, that a necessity is supposed to exist to prove that the treaties made with the Indian tribes are valid; but this necessity is imposed, from the repeated declarations, made hypothetically indeed, upon the supposition that they conflict with the supposed and asserted rights of state sovereignty; that they were not lawfully entered into; that no power is given by the constitution to make these treaties; and, therefore, that they are void. Let me ask the attention of the committee to the proofs that they are compacts, which, if not fulfilled by us, will subject us to the imputation of violating our national faith; that they were, what they profess to be, made with full authority, and are now the supreme law.

These treaties have received the sanction of every department of the government, and by each been considered as binding on the contracting parties.

By the *Executive*. This is necessarily implied in making and ratifying them. For it is not to be presumed that the President would make, and that the Senate would advise and consent to, a treaty which they did not believe was binding on either of the parties to it. But we are not left to mere deductions or inferences from the exercise of the treaty-making power. The records of our government furnish us with ample evidence of the opinions entertained of their validity by all the illustrious men, who have successively held the high office of President of the United States.

General Washington, in a communication to the Senate, in 1790, says, "The treaties which have been entered into with the other tribes in that quarter, *must be faithfully performed on our parts:* I shall conceive myself bound to exert the powers intrusted to me by the constitution, in order to carry into faithful execution the treaty of Hopewell. The letters of the chiefs to the Creeks are also laid before you, to evince that the requisite steps have been taken to produce a full compliance with the treaty made with that nation on the 7th of August, 1790. The Senate advised and consented that the President should cause the treaty concluded at Hopewell *to be carried into execution according to the terms thereof.* It is of some importance that the chiefs should be well satisfied of the entire good faith and liberality of the United States."

Similar opinions were expressed by all the persons holding the office of President. I will detain the committee by referring to those of Mr. Jefferson only.

"The government is determined to exert all its energy for the patronage and protection of the rights of the Indians. Until they cede their lands by treaty, or other transaction equivalent to a treaty, no act of a state can give a right to such lands."

The validity of these treaties has been fully recognised by the legislative department of the government. It has passed, from

time to time, laws regulating the intercourse with them; laws making appropriations of large sums of money to carry these treaties into effect; and the bill now under consideration proceeds upon the admitted principle, that the Indian tribes have, by treaties, rights to lands which are to be extinguished, improvements which are to be purchased and paid for; and appropriates money for these objects.

The judicial department, in the cases before referred to, has made a full recognition of the validity of these treaties. It speaks of them as subsisting; as containing provisions binding on the parties to them, and which, like all other similar compacts with independent powers, are to be faithfully observed.

I have, for another purpose, adverted to the opinions advanced by distinguished senators and representatives in Congress, from the states within whose chartered limits the Indians reside, all sustaining the doctrine that these treaties are the supreme law of the land. I solicit the committee to examine them, in connexion with the topic of argument which I am now discussing.

As these treaties were made under the authority of the United States, they are, of course, valid. The committee will notice the marked distinction, which is made in the constitution, between treaties and laws. Treaties made, or which shall be made, under the authority of the United States, and laws which shall be made in pursuance of the constitution, shall be the supreme law of the land. To make a treaty binding, it is necessary that it should be made by the authority of the United States, and this is all which is necessary. This authority is delegated to the President and Senate, and, when exercised by them, the states have agreed that it is duly made. Whereas, as to a law, it must be made in pursuance of the constitution: and of this, the judicial department is constituted the judge. Now, these treaties have been made by the President, and ratified by two thirds of the Senate. They have, therefore, been made under the authority of the United States; and thus the states, by becoming parties to the constitution, have declared them to be the supreme law of the land. Is it in the power of any state to declare, that, in making these treaties, the limits prescribed by the constitution were passed? that there was an exercise of power not delegated?

It is, in most cases, a safe rule by which to ascertain the correctness of an assumed principle, by following it out in its consequences. What would they be, in the case we are now considering, if these treaties are invalid? If they are void as to the United States, or as to any of the states, they are so as to the Indians. If they cannot be carried into effect, in good faith, because they infringe upon the rights of the states, they are inoperative for all purposes. The Indian tribes may say with great propriety to this government, If you have not the power to fulfil the stipulations contained in the treaties made with us, we are under no obligation, on our part, to comply with them. If you exceeded your powers, the treaties are at an end. And what would then be the result? Why, every cession of land made by virtue of them is a void grant. The boundaries which now circumscribe them

are no longer fixed and permanent. Every thing conceded by them in these treaties is set afloat. Are the states more especially benefited by them prepared for this result? Are they willing to acknowledge the principle, that no permanent rights were acquired for them by the ratification of these treaties?

If the Indian tribes possess the rights of soil and sovereignty to the extent, to which I have attempted to show they do possess them; if the treaties and laws entered into and enacted by the United States in relation to these tribes are valid—the power to pass this law does not exist, and its inexpediency is obvious. It takes away from those tribes, or impairs, the rights which belong to them. It substitutes a legislative enactment, requiring only a majority of both houses of Congress for a treaty, which requires the assent of two thirds of the Senate.

If my physical strength were competent to the task, I would submit to the committee some considerations evincing the impolicy of the passage of this bill, growing out of the enormous expense which will attend its execution, and the utter annihilation which it will cause, of the tribes who may remove to their contemplated residence west of the Mississippi. But I have already exhausted my strength in the discussion of the other interesting questions connected with the bill. I shall leave these topics to my friends who may follow me in this debate.

I would not, if I had the power, excite any improper sympathy in favor of these remnants of a once powerful race. I will not ask the committee to consider the manner, in which the white man was received by them, when he first set his foot upon the shores of the western world; to the cessions of lands which, from time to time, they have made to the colonies and to this nation; to their present condition as improved in civilization, in morals, and religion; to their attachment to their present homes, the lands which they occupy, the graves of their fathers. No, sir; our obligations to sustain and protect them where they now are, are derived from sources, which need not the aid of sympathy to give them efficacy.

My friend from New York (Mr. Storrs) pointed out the view which would hereafter be taken of our decision on this bill, should it become a law. He took us from this hall, and arraigned us before the tribunal of our own countrymen, who would pronounce the sentence of condemnation; before the tribunal of assembled nations, who would pass a like sentence; before the tribunal of posterity, where would be opened the volume of history, in which would be found written, in letters of fire—*This republic violated its solemn treaty obligations with the Indian tribes, because it had the power, and was actuated by motives of interest, to do it.* Sir, our future historian will not have the power of the recording angel, as he writes this sentence, and drops upon it a tear, to blot it out. It will remain there as long as time endures. It is the ulcer of infamy: no balsam can heal it. It is the wreck of a ruined reputation: no artist can rebuild it. I might pursue the train of thought suggested by my friend from New York. I might assemble this nation before the most august tribunal ever to be

erected—the tribunal of the last day. Divine inspiration hath written for our admonition, and I pray that it may not be repeated in the retributions of the final judgment, *Cursed be he that possesseth himself of the field of the fatherless, and of him that hath no helper*, and the congregated universe pronounce the sentence just.

EXTRACT FROM A LETTER WRITTEN BY THE REV. S. A. WORCESTER, MISSIONARY AMONG THE CHEROKEES, DATED MARCH 15, 1830.

As to education, the number who can read and write English is considerable, though it bears but a moderate proportion to the whole population. Among such, the degree of improvement and intelligence is various. The Cherokee language, as far as I can judge, is read and written by a large majority of those between childhood and middle age. Only a few who are much beyond middle age have learned.

In regard to the progress of religion, I cannot, I suppose, do better than to state, as nearly as I am able, the number of members in the churches of the several denominations. The whole number of native members of the Presbyterian churches is not far from 180. In the churches of the United Brethren are about 54. In the Baptist churches I do not know the number; probably as many as 50. The Methodists, I believe, reckon in society more than 800; of whom I suppose the greater part are natives. Many of the heathenish customs of the people have gone entirely, or almost entirely, into disuse, and others are fast following their steps. I believe the greater part of the people acknowledge the Christian religion to be the true religion, although many who make this acknowledgment know very little of that religion; and many others do not feel its power. Through the blessing of our God, however, religion is steadily gaining ground.

SPEECH

OF THE

HON. KENSEY JOHNS, JUN.,

REPRESENTATIVE FROM DELAWARE,

DELIVERED IN THE HOUSE OF REPRESENTATIVES, SITTING AS IN COMMITTEE OF THE WHOLE, ON THE BILL FOR THE REMOVAL OF THE INDIANS, TUESDAY EVENING, MAY 18, 1830.

Mr. Chairman: If on this occasion I could discharge the duty I owe the State I have the honor to represent, by giving a silent vote, I should forbear trespassing upon the time or the patience of the committee. I had indulged a hope that, in deciding on questions involving consequences of so much importance, there would exist a disposition to afford a favorable opportunity for the exercise of calm and deliberate investigation. But, sir, in this I am disappointed. The anxious impatience of those who advocate this bill constrains me, at this late hour, and under circumstances thus unfavorable, to engage in this debate; and should I accomplish nothing more by my feeble effort than to arrest this hasty action, I shall, in part, have attained my object. It may be, that, time being gained for deliberation, the principles of justice will be recognised, and allowed their appropriate influence.

Sir, I have examined, I believe without prejudice, the provisions of this bill. I have viewed the subject in every light, and feel anxious to act in a manner calculated to fulfil all our obligations, as well to the several States as the Indian nations, who, in their dependent condition, have appealed to us for protection, and rest their claim upon the faith of treaties. I am not insensible to the difficulties and embarrassments with which we are surrounded. Georgia holds our bond, and demands that the condition be performed; the Indian nations point to our guaranty, and have confidence in the plighted faith of the republic. Can we, by adopting the course prescribed by the bill as reported, avoid violating admitted rights? Shall we not thereby fail to decide upon that which the President has presented to our consideration? Has he not invited our attention to more than this bill provides for? Does he not, in express terms, inform us of the difficulties existing between the Indian nations and the southern States, within whose chartered limits they reside? Has he not fully and decidedly declared his opinion in reference to the right of the States to extend their laws over the Indian tribes? Sir, I am not disposed to imitate the example of the executive; nor do I feel

inclined to pass beyond the limits of our legislative power, and express a gratuitous judgment on the acts of particular States. They have proceeded upon their own responsibility. It becomes us to guard the national faith, and to be cautious how we impair the obligations of the most solemn compacts. We are called upon as members of the United States. In our hands is deposited the honor, the faith, and the character, of the American republic. Shall we not be faithful to our trust, and sanction only such measures as will accord with national responsibility? We have hitherto boasted of our scrupulous regard to the principles of humanity and justice. Are we willing to discard their influence, and, in the enjoyment of power, forget right? Sir, I feel conscious the State I have the honor to represent would not sustain me in any course which has the appearance of oppression. Her sons have never failed, in the hour of danger, to support the honor of their country, and resist the oppressor—they cannot practise towards others that to which they have themselves refused submission.

Sir, I find it impossible, from the best consideration I have been able to give this subject, to yield my support to the bill; and, with a view to obviate the difficulties which must necessarily attend this enlarged plan of removal, I have offered the amendment which restrains the operation of the bill, and confines it to the terms of the contract with Georgia. This, I apprehend, will fully discharge our obligations to that State, preserve inviolate the national faith, and afford ample protection and security to the Indians.

In presenting to the committee the reasons which have induced me to propose the amendment, I shall endeavor to observe as much brevity as is consistent with a proper regard to the importance of the subject. It is not my intention to reiterate arguments which have been, in the course of this debate, enforced with much ability. I have no desire either to excite party feeling, or strengthen any sectional prejudice, but, as far as in my power, to bring to bear upon this question, that calm, dispassionate, and unprejudiced deliberation, which becomes the representatives of freemen; that our decision may harmonize with the spirit of our free constitution, and manifest to the world that we are worthy of the civil and religious privileges we enjoy.

Before entering upon a particular explanation of the amendment I have offered, I would call the attention of the committee to a few important principles, which have an essential influence on the question, and come to us recommended by the weight and authority of the highest judicial tribunal of our country. From the decision of the Supreme Court of the United States, in the case of the Society for propagating the Gospel in foreign Parts, we find it is settled that discovery is the original foundation of titles to land in America, as between the different European nations by whom conquests and settlements were made. It gave to the nation making the discovery the sole right of acquiring the soil from the natives, and establishing

settlements. It was a right with which no Europeans could interfere. It was a right which all asserted for themselves, and to the assertion of which by others all assented. The relations which were to exist between the discoverer and the natives were to be regulated by themselves. In the case of Johnson against M'Intosh, it was decided that, while the different nations of Europe respected the rights of the natives as occupants, they asserted the ultimate dominion to be in themselves, and claimed and exercised, as a consequence of this ultimate dominion, a power to grant the soil while yet in the possession of the natives. These grants have been understood by all to convey a title to the grantees, subject only to the Indian title of occupancy.

From these principles, relative to the rights acquired by discovery, we have clearly defined and explained the origin and extent of the pre-emptive right. This right of pre-emption, vested in the sovereign, was by the sovereign power always regulated. Hence we observe, in the history of the early settlement of this country, the right to purchase the land from the natives was derived from the crown, by express and special grant; and, after the colonies were established, the extinguishment of the Indian title was generally effected by treaties, through the agency of the respective governors. These negotiations were subject to the control of the crown, and conducted in that mode which the sovereign thought proper to prescribe. Thus we find, when, in the year 1763, the colonists violated this settled policy, the king issued his proclamation, declaring that the crown reserved, under its own dominion and protection, for the use of the Indians, "all the lands and territories lying to the westward of the sources of the rivers which fall into the sea from the west and northwest," and forbade all British subjects from making any purchases or settlements whatever, or taking possession of the reserved lands.

I have called the attention of the committee to these matters as they were understood in time past, that we may correctly comprehend the nature and extent of the title, as it existed prior to the revolution, and which we claim as derived by virtue of the treaty of peace of 1783. It appears, antecedent to that event, uniformly to have been considered a sovereign right; and since that period, the only question has been whether it was transferred to the United States or passed to the respective States. The Supreme Court has declared that it has never been doubted that either the United States or the several States had a clear title to all the lands within the boundary lines described in the treaty of peace of 1783, subject only to the Indian right of occupancy, and that the exclusive power to extinguish that right was vested in that government which might constitutionally exercise it. The several States have generally ceded those lands to the United States. They were occupied by numerous tribes of warlike Indians; but the exclusive right of the United States to extinguish their title, and to grant the soil, has never been doubted.

I would here remark, that, immediately on the declaration of independence, each colony claimed and exercised all the powers of a sovereign and independent State, and, prior to the adoption of the articles of confederation, became entitled to the pre-emptive right, as it had existed in the crown, in relation to the Indian lands within its chartered limits. If we recur to the history of this period, it appears that the respective States claimed and exercised the treaty-making power in the extinguishment of the Indian title. Thus we observe, from the treaty at Dewitt's Corner, on the 20th of May, 1777, the States of South Carolina and Georgia respectively appointed commissioners to treat with the Cherokee nation of Indians. In all the circumstances which attended this treaty, we discover the same formality which usually attends such transactions. The commissioners on behalf of the States are vested with full powers—the deputies appointed by the Cherokee nation are also vested with the same power, in full council. By this punctilious observance of all the forms essentially connected with the exercise of the treaty-making power, the State of Georgia, at a time when she was in full possession of all her sovereign powers, recognised the Cherokee nation; and has, by the terms of that treaty, acknowledged their sovereign and independent national character. After Georgia acceded to the articles of confederation, it was considered that the treaty-making power was necessarily transferred to the United States, as inseparably connected with, and an essential incident to, the right of declaring war or making peace. It is true that, prior to the adoption of the present constitution, doubts were entertained in relation to its exercise as to Indian tribes within the chartered limits of the States; and Georgia protested against it; but her protest was disregarded, and treaties were made and ratified under the articles of confederation with the Cherokee and other Indian nations. I am aware of the particular clause in the articles of confederation which gave rise to the doubts, and induced Georgia to protest against the exercise of the treaty-making power by the United States, in relation to the Indians within her chartered limits. The clause to which I allude grants "to the United States, in Congress assembled, the sole and exclusive right and power of regulating the trade and managing all affairs with the Indians not members of any of the States; provided that the legislative right of any State within its own limits be not infringed or violated."

Admitting the objections of Georgia to have been well founded under the articles of confederation, we cannot avoid the conclusion to which we must come, when, on adverting to the clause in the present constitution granting to Congress the power to regulate trade with the Indian tribes, we find it unrestrained by any qualification, and unconnected with any proviso. This unlimited delegation of power, together with that part of the sixth article which declares, that "this constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under

the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, any thing in the constitution or laws of any State to the contrary notwithstanding," appears to me to remove all doubt, and establishes beyond all controversy the right of the United States. And may I not ask, How can Georgia, after having become a party to this constitution, object to treaties made and ratified according to the express terms of that compact? Is it competent for one State to annul, by her interpretation of the constitution, a power hitherto exercised, and without dispute? Georgia, sensible of the difficulty, endeavors to evade the obligation of our Indian treaties, by assuming ground which, I apprehend, is not tenable. In support of the new doctrine now advanced, we are told the treaty-making power is confined in its action to foreign powers; and, as it is denied that the Indian nations stand in that relation, the advocates of the bill contend, that the Indian treaties are not what they purport to be. Sir, I should like to hear from those, who have made this suggestion, an explanation of what constitutes a foreign power. The Indians would probably answer an argument founded on so strange a proposition by appealing to the transactions of the past, and ask to be informed how and when their right of self-government had been surrendered? But, sir, we are not left in doubt or uncertainty as to the relation the Indian nations sustain to the Union, or the States within whose limits they are. I admit, under existing treaties, the Indian nations are dependent sovereignties with regard to the United States; but I apprehend none can deny that they now are, and always have been, independent of the States. So far as the general government exercises any power over the Indians, the right is derived from treaties, and by the same instruments their sovereignty is recognised and guarantied. Is it because their intercourse with foreign powers is prohibited, that we refuse to concede their national character? Reasoning from similar premises, we should conclude that the several States of this Union were not independent in relation to each other. If we advert to the restriction upon the powers of the several States, we must admit they are confined within narrower limits than the Indian tribes. The latter have always enjoyed and exercised, in its fullest extent, the right of self-government; none has questioned their power to declare war and make peace; to regulate their own internal trade; to enact and administer their own laws, both criminal and civil; and, in every respect, to maintain their national rights within the limits of their own territory. This right to manage, according to their own will and pleasure, their own municipal concerns, we have always admitted, not in consequence of any concession on our part, but as derived from their ancestors, and guarantied to them by the faith of treaties. Having recognised the right, it does not belong to us to prescribe the peculiar form or mode in which it shall be exercised. It is not our province to decide whether they shall live under chiefs, or enjoy the advantages of a representative government. The

particular form cannot effect the existence of the right. This is a matter, which is exclusively and appropriately under their own control. If, then, I am correct in the view I have taken of this part of the subject, how can the claim of Georgia to extend her laws over the Cherokee nation be sustained? It has been very gravely contended, in the course of this debate, that it is a violation of the sovereignty of Georgia for the Cherokee nation to establish an independent government. Sir, I confess I am at a loss to appreciate fully the propriety or justice of the pretensions now for the first time advanced by Georgia. Why is the attempt now made to bring under the operation of her laws the Indian nations, when, for so long a period, she has continued to derive benefit from the numerous treaties made with those tribes, and by her conduct sanctioned their validity?

But it has been alleged, against the right of the Cherokee nation to continue within the territory they now possess, that they have attempted to improve their form of government, and thereby indicate a disposition to meliorate their condition. This has been considered, by very high authority, a violation of that clause of the constitution which declares, that new States may be admitted by the Congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned, as well as of the Congress.

Now, sir, the Cherokee nation, which has always existed independent of the State of Georgia, having in some respects improved their form of government, in the exercise of a clear and undoubted right, neither derived from nor in any way influenced by the United States, it is said their acting in this manner, if sanctioned, will be a violation of the constitution. Sir, the source from which this opinion emanates, being no less than the chief magistrate of these United States, and reiterated by the secretary of war, demands for it the most respectful consideration. We are often induced to consider certain propositions sound, because they are advanced by individuals occupying situations which add weight and influence to their opinions. Had this constitutional question been of less distinguished origin, I should scarcely have considered that it merited refutation. If I do not greatly misapprehend the import of this clause of our constitution, it refers exclusively to the action of Congress, and I am yet to learn when or how we have had any agency or instrumentality in erecting the Cherokee nation into a State, or by what train of argument an Indian nation, which never has been under the jurisdiction of Georgia, by exercising its legitimate power of self-government, can be charged with violating the rights of Georgia. Sir, I cannot concur in this construction of the constitution, unless I concede to those who maintain it that the Cherokees are within the jurisdiction of Georgia, and never have been, and are not now, in the full enjoyment of sovereignty, and entitled to all the rights and privileges of self-government. But, that I may stand *rectus in curia* on this impor-

tant point—the question of sovereignty—I will refer to an argument made by the present secretary of war, when a member of the Senate, which is not of very ancient date. That I may do justice to the secretary of war, I will ask the special attention of the committee, while I read from his speech, delivered on the thirteenth of February, 1826, in the Senate. The subject then under consideration was an appropriation for the repair of post-roads, and particularly of one through the Indian territory:—

"Mr. Eaton of Tennessee said, a treaty had been entered into, in 1801, between the United States and the Choctaw Indians. The question of State rights had not then arisen, and the government of this country was in the hands of Mr. Jefferson. Under such an administration, no attempt would have been made to enter into a treaty with a distinct sovereignty, that went to invade the principles of the constitution. By the second article of that treaty, the Indians gave their consent that a wagon road should be constructed through their lands; and if the idea was a correct one, that to make such a road was unconstitutional, was it not strange that the Senate should not have conceived this idea in 1801, or, if they did conceive it, that they should have acted as they did? Mr Eaton said, a road had been made from the State of Georgia to the State of Tennessee, which was at present the main highway between these two States. Ever since this government had existed, Mr. E. said, they had proceeded on the principle that the Indians are a distinct sovereignty. It was an anomaly that one sovereignty should exist within the orbit of another; but they always had proceeded on this principle; and if they had any right to interfere with them, why did they proceed with them in the character of sovereignties? If there was any force in the objection urged by the gentleman from Georgia, at least so far back as 1801, something would have been thought about it in the Senate when they entered into this treaty with the Indians, by the second article of which, privilege is granted to the United States to open a road through their country. Mr. Eaton contended, there was no cession of property, on the part of these Indians, by the provisions of this treaty—there was not even a cession of sovereignty. They, in their sovereign capacity as Indians, yielded their consent to the United States to open a road. The United States could not give the State of Mississippi any sovereignty over it."

Such were the sentiments of the present secretary of war, in the year 1826. What new light has been shed upon the subject, which could operate so great a change in his views since that period, it is not for me to explain.

I would ask the indulgence of the committee, while I direct their attention to a few extracts from a speech delivered by Mr. Reid, a senator from Mississippi, on the subject of our Indian relations, the 20th of March, 1826. I refer to it as expressing the sentiments of an individual, in reference to the State he represented, and who had every opportunity of being well acquainted with the true state of public opinion on this subject:—

"Mr. Reid said, the resolution which he was about to offer to the Senate involved some principles in which several of the States of this Union had a joint and something like an equal concern. It related to the Indians, and to the light in which they were to be viewed by this government. It was well known, Mr. R. said, that there were sev-

eral States of the Union, a great portion of whose territory is in the occupancy of the aboriginal inhabitants; and he presumed it was already known to the Senate, that more than half the State of Mississippi, which he had the honor in part to represent, is still in the occupation of the Indian tribes—the Choctaw and Chickasaw nations. In regard to the action of the State laws on these people, there never had been any difficulty; nor was it ever sought, on the part of the State of Mississippi, to extend its jurisdiction over them; but there were evils, growing out of their situation in this territory, which required the consideration of government. Mr. R. said, he did not mean to call the attention of the Senate to the actual condition of these people, who inhabit the territory within the limits of a State; his object was to call the serious consideration of the Senate to the condition of our own citizens, who, after having committed crimes or contracted debts, locate themselves amongst these Indians, and consider themselves as beyond the jurisdiction of our laws. This was a state of things, which, Mr. R. said, the Senate would easily perceive, was not to be endured; and if there was any thing within the competency of the Senate to remedy the evil, it was time it should be done. These persons are exempted from the jurisdiction of the laws of the Union, and cannot be reached by the laws of the State of Mississippi. It had occurred to him, therefore, that it was a duty incumbent upon him to call this matter to the consideration of the competent authority of the United States. He repeated, it was not sought, on the part of the State of Mississippi, or by her senators in this House, to enforce the action of the laws on the Indians themselves; they did not claim to consider them as subject to their operation. The Indian tribes have laws and traditionary usages of their own, and are entitled to the patronage and protection of the general government. And Mr. R. observed, the Indian rights are sufficiently secured, and they themselves are protected, in the enjoyment of the lands on which they are located."

"There was, Mr. R. said, another question involved in this matter, which he was very anxious to bring before the consideration of the proper authority of the Union. How far it is within the competency of the State to extend the action of its own laws, without the aid of the United States, to persons thus circumstanced, is a question somewhat novel, and has never been decided. At the last session of the legislature of Mississippi, a proposition was made to extend the civil power of their courts to their own citizens who had contracted debts within the State, and had fled to this savage sanctuary. The matter was debated for many days, and it was at last decided that there existed no power in the State to extend the action of its laws in the manner which was sought by the proposition before the legislature. Mr. R. said his own opinion on this point was, that it is in the power of the State to act within its own territorial limits, so far as to serve its own civil process, and the action of its laws, on citizens who may have contracted obligations. The State decided otherwise, and said it was a matter for the general government; therefore, if there was any remedy on this subject to be obtained, it was to be at the hands of the general government, and not by force of any competent authority in the State government."

I have adverted to what has heretofore been said, because I apprehend nothing has since occurred to vary the rights of the respective parties. The sovereignty of the Indians was not only admitted, but considered unquestionable by the present secretary of war; and from what was stated by the former senator from Mississippi, that State, after many days' debate, decided

against the right of State jurisdiction. The committee will therefore perceive, that, in objecting to the construction the President has given that clause of the constitution, which refers to the admission of new States, I am supported by respectable authority. If, then, I am warranted in saying, that the Indian tribes are entitled to be considered and treated as sovereign nations, and that it is not within the competency of the States to extend their laws over them, may I not ask upon what principles we can sustain the bill as reported? Surely we are not willing to rely on force, at the expense of right and justice. I cannot permit myself to believe that the representatives of twelve millions of freemen will sanction a measure fraught with oppression, and which must inevitably bring disgrace upon our country. I admit the bill does not indicate that force is to be applied. But if we withhold protection, disregard our treaty stipulations, and leave the Indian nations to the operation of the laws of Georgia, Mississippi, and Alabama, this appropriation will come in aid of oppression; and, although we profess to leave the Indians free to act, none can doubt they must yield, and, however unwilling, be constrained to leave their homes, and their country, and escape to the wilderness.

The chairman of the committee on Indian affairs has endeavored to sustain the principles of this bill, as according with the policy of all former administrations, and particularly recommended by Mr. Jefferson; as further sanctioned by every feeling of humanity, and calculated to improve the condition, and promote the future prosperity of the Indian tribes. In support of his argument, he has referred to what Mr. Jefferson alleged as an argument in favor of the purchase of Louisiana. It occurred to him, as a reason why we should possess the valley of the Mississippi, and the range of country west, that, in addition to other advantages, it would afford a retreat for the Indian tribes, at some future period. But none can believe he ever would have advocated a removal of the Indians of the character of that now contemplated, especially when we regard the sentiments contained in his letter to general Moultrie. He there declares his determination to execute our treaties with the Indian tribes in good faith, and, if necessary, he would use the force of the nation for their protection. If, Sir, we turn our attention to the policy of former administrations, we shall discover nothing to sanction this bill. General Washington adopted the principles and practice of the early settlers and colonial governors, and, as has been stated by an able writer on this subject,

"Mr. Jefferson was a member of his Cabinet, and doubtless intimately conversant with these fundamental measures. The five first Presidents of the United States made treaties with the Cherokees, all resting on the same acknowledged principles. Mr. Jefferson, the third President, having pursued the policy of general Washington on this subject with more undeviating zeal than on any other subject whatever—being about to retire from the chief magistracy—and standing midway between the era of 1789 and the present year, wrote a fatherly letter to the Cherokees, giving them his last political advice. This

letter is preserved by them in their archives. A negotiation is held with them on their own soil, or, as the title has it, 'within the Cherokee nation,' under the direction of the fifth President of the United States. The letter of Mr. Jefferson is produced and incorporated into a treaty. It is therefore adopted by the people of our land, and approved as among our national muniments erected for the defence of our weak neighbors. What adds to the singularity of the transaction is, that this letter, reaching backward and forward through five administrations, is adopted in the fifth by a negotiator, who is now the seventh President of the United States; thus bringing all the weight of personal character and political consistency to support as plain stipulations as can be found in the English language or any other."*

Sir, this letter of Mr. Jefferson, thus adopted and sanctioned, speaks a language not to be misunderstood. It declares the United States will always regard both branches of the Cherokee nation as their children. It says that all "the individuals of the Cherokee nation have a right to their country; and, therefore, if a part of the nation surrenders to the United States its right to lands east of the Mississippi, it must receive from the United States a right to lands west of that river. It says that those Cherokees who choose to remove, may emigrate with the good wishes and assistance of the United States, and that those who remain may be assured—(yes, in the words of Mr. Jefferson, adopted by general Jackson) may be assured of our patronage, our aid, and our good neighborhood." Sir, I apprehend, after reading this letter, no doubt can exist in relation to the sentiments of Mr. Jefferson, or the policy of former administrations. During that period, it may truly be said, those Indian nations enjoyed all their rights and privileges unmolested; they then sat under their own vine and their own fig-tree, and there was none to make them afraid. They relied with confidence on our national faith, "because no President of the United States had broken faith with Indians."

Sir, I feel confident no preceding administration has ever countenanced or sanctioned the right of legislation now assumed by the States; or ever dreamed of robbing the Indians of their rights. That was reserved to mark the era of this administration; and, in the eloquent language of Pitt, who, in the day of our adversity, boldly and fearlessly asserted our rights in the British Parliament, when the advocates of power claimed the right to oppress our forefathers in their weak and dependent condition, I may with propriety add, "With the enemy at their back, with our bayonets at their breasts, in the day of their distress, perhaps the Indians will submit to the imposition, but it will be taking an unjust and ungenerous advantage."

Such was the sentiment expressed by a British statesman in our behalf, when the government was appealed to, as authorizing the oppressive exercise of power against right; and am I not warranted in applying it to the present condition of the Indian tribes, especially those over whom the States assume the

* See Letters of William Penn, No. XII.

right to extend their laws? And, Sir, is not the parallel more striking, when we call to mind the measure proposed by the individual, who holds the station of superintendent of Indian affairs? Has he not recommended, in his communication to the President, which has been laid before us, to place near those Indian tribes an imposing military force, which would overawe the chiefs, and enable the inferior class to enrol as emigrants, by protecting them against the influence of those who exercise authority over them? From the information communicated by the executive, extraordinary means have been adopted, and no effort left untried, to induce the Indians to emigrate. Secret agents have been specially instructed, and attempts have been made to operate on the red man in the line of his prejudices. Has not every attempt proved unsuccessful; and, notwithstanding the means which have been resorted to, have we not, in the memorials on our tables, enough to satisfy us that no impression has been made?

I would now briefly examine the humanity of this project. The extensive operation of this bill, embracing the number and involving the fate of not less than seventy thousand Indians, is of itself enough to create doubt and excite anxiety as to the consequences likely to result from its adoption. It may be that the absence of all information, as to the manner in which the removal of so great a multitude is to be conducted, and an entire ignorance of the nature or peculiar adaptation of the country designed for their occupation to afford the necessary means of subsistence, preclude my forming a satisfactory opinion. But, when called upon to sanction so important a measure, supposing we have the right, we certainly should have, from the best source, accurate information, that we might be able to exercise intelligent legislation. Sir, I apprehend the execution of the measure contemplated by the bill, will afford, by sad and melancholy experience, an amount of suffering and distress, which, could we now realize it, would make us shudder, and recoil from this ruinous and disgraceful project. Truly, it may be said, we are about to take a step in the dark—and who can assign any good reason why, at present, we should thus eagerly embrace this visionary system? The advocates of the bill have attempted to sustain it, as I have already stated, on principles of humanity, and endeavored to enforce their arguments by portraying the present condition of the Indian tribes as degraded, and exhibiting the extreme of wretchedness. I regret that it should have been considered necessary to connect with this description remarks tending to impugn the motives of those, who have been instrumental in advancing the cause of civilization, and extending the influence of moral and religious principles. Sir, I did suppose, if any unkind feeling existed towards these great and good men, whose names and characters would do honor to any age and country, their peculiar respectability, and unquestioned and disinterested philanthropy, would have shielded them from an attack such as we have heard in this debate, denouncing them as hypocrites, fanatics, and zealots. Surely, when such epithets are thus applied, we, who entertain far different opinions of those benevolent individuals, who have hitherto acted in union

with former administrations, and as the faithful almoners of the public charity and bounty of the government, cannot avoid repelling the charge, and entering our solemn protest against the unfounded aspersion. Sir, I should have thought it enough, after all their toil and labor, when they were about to realize the accomplishment of that object so desirable to every friend of humanity, and rejoice in the melioration of the savage, that they should have to witness the destruction of their best hopes, and submit to the inexorable mandate which consigns the Indian back again to the habits of the hunter, and the wild and uncultivated region of the wilderness. And is this the condition favorable to Indian civilization and reform? Surely we are determined to reject, not only the practice of former times, but all past experience. Civilization is the result of restriction and necessity; and, if I mistake not, man more readily casts off than yields to its influence. Sir, if I could control the measure now under discussion, I should be unwilling to disturb those remnants of former times, or countenance, in the slightest degree, this novel mode of Indian civilization.

But, sir, from the peculiar relation in which the United States is placed in regard to Georgia, I feel willing to comply with the terms of that contract, and for this purpose have submitted an amendment which provides the means, but at the same time prohibits their application, unless the object can be obtained peaceably and on reasonable terms.

I shall, after having thus detained the committee much longer than I intended, endeavor to confine the few additional remarks I have to submit within as concise a statement as practicable. And, in the first place, I would ask the attention of the committee, for a few moments, to the unjust and unequal operation of the bill, in reference to the obligations and relation of the United States to the respective States, within whose limits the Indian tribes are situated. The bill, without making any distinction as to the mode or manner in which the expense of extinguishing the Indian title is to be defrayed, embraces all the Indians with whom we have treaties, and requires the title to be extinguished, and the consideration to be paid out of the treasury of the United States. Now, sir, we stand in a very different relation in respect to our obligations to Georgia, and to Alabama, Mississippi, and Tennessee. In the former, we are bound to extinguish the Indian title, and to defray the expense thereof, when it can be done peaceably and on reasonable terms: in the latter, we are under no obligation whatever. In Alabama and Mississippi, the reversionary interest, when the Indian title is extinguished, belongs to the United States; and I cannot understand either the propriety or necessity of increasing the quantity of vacant land in those States, when there is already more surveyed, and in the market, than can be sold for many years, probably in half a century. I cannot be mistaken; because, on referring to the official statements, I observe, in Mississippi, the amount of sales, after deducting lands reverted and relinquished, is 1,155,562 acres, when the quantity surveyed amounts to 8,733,928 acres; the quantity purchased by

the United States being 14,188,454 acres, the quantity of land unsold the first of January, 1826, was 11,643,275 acres. In Alabama, the quantity purchased by the United States is 24,482,159; the amount sold, deducting lands reverted and relinquished, is 3,496,369 acres; the quantity of land surveyed is 22,602,754 acres, and the quantity of land unsold is 20,268,863 acres.

But, sir, if we advert to the aggregate amount of land, to which the Indian title has been extinguished, and which is now in our power to bring into the market, the inexpediency of expending the public treasure to enlarge the quantity, must be apparent to every one. Sir, the quantity of land in the several States and territories, to which the Indian title has been extinguished, amounts to 261,695,427 acres; the amount sold, from the 4th of July, 1776, to 31st December, 1825, deducting lands reverted and relinquished, was 19,239,412; the quantity surveyed, 138,988,224; and the balance remaining unsold being 213,591,960 acres, on the 1st of January, 1825. Sir, I cannot comprehend why we are now urged to remove the Indians from land they occupy in the new States, when it is manifest we have already more vacant land than we can find people to settle and cultivate; and more than we can dispose of, by sale, for a century to come. Sir, if we adopt the bill, and remove the Indians, we gain no advantage by the result, but rather impair the value of the public domain, and increase the difficulty and expense of their protection and support, in the remote country where it is proposed to send them. With respect to the Indian title to land in Tennessee, as the United States has relinquished the reversionary interest to that State, I cannot consent that the expense of extinguishing it should be defrayed out of the treasury of the Union. Such has not been the practice in relation to the old States, and I can see no good reason why it should be adopted in favor of Tennessee.

From the best consideration I have been able to give this subject, it appears to me there is no claim upon the United States except that which arises from the contract with Georgia in 1802. And, in reference to that, our undertaking is conditional: it is not absolute. The amendment I have proposed does all we can do towards its execution, and, if adopted, will relieve us from much difficulty. Sir, I fear the consequences that must result from passing the bill. The magnitude of the undertaking, and the enormous expenditure it must occasion, present it as a doubtful, and there certainly do exist strong reasons to apprehend it must prove a dangerous and ruinous experiment. The chairman of the committee on Indian affairs has formed his estimate of the expense on premises which must prove illusory. He has presented a calculation based on the present low price of provisions in that country; but when seventy or eighty thousand Indians are removed there, I should anticipate a very different result. We may, if we are not blind to the occurrences of the last war, derive important information from the difficulty then experienced in affording subsistence to but a small force on our frontiers. I cannot concur in the accuracy of the estimate, which has been made by the gentleman from Tennessee, when he informs us the aver-

age cost per head will not exceed eight dollars. If we advert to the expense incurred in the removals which have been made, the amount expended considerably exceeds that sum. I would direct the attention of the committee to the information communicated in answer to a resolution of the House, which passed some time since. We there have it stated, that Brearly's party of Indians, in 1827 and 1828, cost the government for their removal upwards of $40 per head; that the expense of supporting them one year was $24 22 per head. Now, sir, we must add to this the sum required to extinguish the Indian title, and $30 to each warrior for presents; as also the funds necessary to pay Indian agents and those who conduct the emigrants. Should the terms of the bill be complied with, and all the Indians with whom we have treaties be removed, the number cannot be less than eighty thousand. All circumstances considered, if we pay a fair compensation for the Indian improvements, the sum which must necessarily be expended cannot be reduced below eighteen millions, and probably will amount to twenty. Now, sir, how are we to receive an equivalent for this extravagant expenditure of the public treasure? The chairman of the committee on Indian affairs has told us the United States will be remunerated by acquiring at least thirty-eight millions acres of land, a large portion of which he has represented as valuable. Sir, I admit that, in Alabama, Mississippi, and Indiana, on the extinguishment of the Indian title, the United States will be entitled to the possession; but in Georgia and Tennessee, it will be otherwise; and those States alone will derive all the benefit, the latter contrary to all former practice, without incurring any expense. Sir, from the quantity of land now in the market and remaining unsold, I am inclined to believe, by increasing the amount we shall depreciate the value.

Now, sir, the amendment I have proposed will obviate many objections, which, in reference to the bill, appear to be well founded. If adopted, it will satisfy Georgia. We are not only willing, but prepared, to comply with the terms of the contract of 1802. It will place under the control of the executive, as a specific appropriation, the necessary funds, to be applied, when practicable, in discharge of our obligations to Georgia, and in accordance with the letter and spirit of her own agreement—when the same can be executed peaceably and on reasonable terms. By restricting the bill, as I apprehend it should be, we shall avoid violating the faith of treaties, and present the subject in a manner calculated to obtain for it a favorable consideration. We shall, further, hold out stronger inducements to the Indians to repose confidence, as the prospect of success will be greater, and there will exist less doubt as to our ability to afford subsistence and protection.

Sir, the advocates of this extensive and general system of removing the Indians, appear to me to hazard all, by attempting to accomplish more than is now either expedient or necessary. The magnitude and expense of the plan contemplated by the bill must arrest and ultimately defeat its execution. The people whom we represent will not sustain the measure; it cannot, when fully un-

derstood, meet with their approbation or receive their sanction. The immense drain upon the treasury of the nation will attract attention, and induce all to examine and consider the subject; and, if I have formed a just estimate of the moral feeling of the American people, when the sufferings and distress of the Indians shall have filled the measure of their wrongs, and, from the inhospitable and sterile wilderness to which we are about to consign them, shall cry aloud for vengeance, and proclaim to the civilized world the ingratitude and disgrace of the nation thus acting in violation of the most solemn treaty stipulations, and regardless of every principle of humanity—then, if not till then, will awake the indignant feeling of freemen, jealous of their country's honor. But we cannot then repair the injury, nor blot from our escutcheon the indelible stain.

Sir, it becomes us to pause and deliberate in the most solemn manner, before we adopt this bill. Why this impatient, hasty action, in a matter involving the fate of thousands of our fellow beings, and the character and reputation of our highly favored and respected republic? May I not say more?—will not our decision have an important influence on the cause of liberty throughout the world? To us much has been given, and of us much will be required: our station is as conspicuous as it is elevated. The friends of liberty regard us with an anxious, and the opponents with a jealous eye. To us our ancestors have confided a sacred deposit, an inheritance worthy of their name, and endeared to us by the recollection that it was the purchase of their blood and sufferings, when they struggled against oppression. Are we thus soon prepared to forfeit our birthright, and sacrifice all that should be dear to freemen? Has our prosperity corrupted our feelings, and inclined us, in the enjoyment of power, to forget the principles of justice, and trample upon the rights of the weak and dependent? Does the doctrine of force now prevail, and, because we are strong, shall we embrace principles that would disgrace even despotism?

Sir, I have endeavored, on this important question, to suggest that which to me appears calculated to discharge fully and fairly our obligations to all parties, and avoids even the appearance of an intention to violate the national faith. This violated, how can we answer for our disregard of obligations, which have such peculiar strength and influence; equally binding upon nations as individuals, and in their preservation affording the surest and best foundation for the support of our free and republican institutions. All nations acknowledge, without exception, the respect due to the law of good faith; and, as was justly remarked by one of our ablest statesmen, on a former occasion, "It is observed by barbarians; a whiff of tobacco smoke, or a string of beads, gives not merely a binding force, but a sanctity to treaties. Even in Algiers, a truce may be bought for money; but, when ratified, even Algiers is too wise or too just to disown and annul its obligation. Thus we see, neither the ignorance of savages, nor the principles of an association for piracy and rapine, permit a nation to despise its engagements. If, sir, there could be a resurrection from the

foot of the gallows—if the victims of justice could live again, collect together, and form a society, they would, however loath, soon find themselves obliged to make justice, that justice under which they fell, the fundamental law of their state. They would perceive it was their interest to make others respect, and they would soon pay some respect themselves, to the obligations of good faith. It is painful, I hope it is superfluous, to make even the supposition, that America should furnish the occasion of this opprobrium. No! Let me not even imagine that a republican government, sprung, as our own is, from a people enlightened and uncorrupted—a government whose origin is right, and whose daily discipline is duty—can, upon a solemn debate, make its option to be faithless; can dare to act what despots dare not avow; what our own example evinces that the States of Barbary are unsuspected of." Sir, I cannot believe the American people have degenerated, since the time when Ames thus, in the strong and eloquent language I have quoted, enforced the obligation of national faith. Enjoying, as we do, in a peculiar manner, the rich blessings of the purest republican government, and boasting of our civil and religious privileges, we cannot stoop so low, nor consent to sacrifice that which alone, by its universal influence, guaranties to us security as individuals and as a nation. If we should in an evil hour sully the lustre of the American name, and destroy the last hope of liberty, I would rather share with the Cherokee the fate that awaits him, than encounter the infamy and disgrace which must be our portion. Sir, I cannot yield my assent, nor can I believe the American people are so lost to all moral feeling, as to sanction a policy thus dangerous in its consequences, and tending to violate the rights of others. Sir, I yet indulge the hope that He, whose kingdom ruleth over all, will, as in time past, dispel the dark cloud which hangs in lowering aspect over our political horizon. He alone can restrain the wrath of man, and bring order out of confusion. To his hand would I confide the issue, and, having discharged my duty to my country and the State I have the honor to represent, await that decision which I trust will proclaim to the world, in strong and emphatic language—"that we still hold these truths to be self-evident; that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that to secure these rights, governments are instituted among men, deriving their just powers *from the consent of the governed*." If we are true to the sentiments expressed in this memorable declaration, which we justly prize as the charter of our liberties, the Indian nations are safe, and they may continue to repose confidence in the plighted faith of the republic.

SPEECH

OF THE

HON. ISAAC C. BATES,

REPRESENTATIVE FROM MASSACHUSETTS,

DELIVERED IN THE HOUSE OF REPRESENTATIVES, ON THE BILL FOR THE REMOVAL OF THE INDIANS, WEDNESDAY, MAY 19, 1830.

MR. SPEAKER: I shall take it for granted that the States which have passed laws subjecting the Indian tribes to their jurisdiction, mean what, by their legislative acts, they say they mean; and that the laws, which they have passed, are to be enforced. I reject even the supposition, that these laws are made not to be executed, but in mockery—to be used as an expedient, a contrivance—the means of driving a bargain. Upon such an attempt, come from what quarter it may—States or individuals—the House would frown indignantly. This granted, I affirm, that the bill before us does not meet the exigency of the case, nor present fairly and fully the question upon which we are to decide.

There are, at the south, several tribes of Indians—the Cherokees, Creeks, Chickasaws, and Choctaws—with whom the United States stand in this relation, viz. They are under the protection of the United States. The boundary is defined between them and the people of the United States, which no white man is at liberty to pass without a license under the authority of the United States. In short, they hold the guaranty of the United States, in all the solemn forms of a treaty stipulation, by which the faith of a nation can be pledged, to protect and defend them. The States of Georgia, Mississippi, and Alabama, have passed laws, as these tribes say, directly violating their territorial and national rights. Take the law of Georgia as an exemplification of the laws of the three States. The eighth section makes it penal for a Cherokee to "endeavor" to prevent one of his tribe from emigrating. A father, therefore, may not influence his child, nor a guardian his ward. No, Sir; he thus exposes himself to four years confinement to hard labor. What will men, who are fathers, or not fathers; what will men who are free, say to this?

The fifteenth section enacts, "that no Indian, or descendant of an Indian, within the Cherokee nation of Indians, shall be a competent witness in any court of Georgia, in a suit in which a white man is a party, unless such white man resides within said nation." While Georgia makes the Indians citizens, or subjects, she does not leave them to the common law to be excluded for infamy, interest, or incompetency of any kind; but she proscribes the na-

tion—and that without reference to the character, talent, or capacity of individuals, whether Christian or heathen, civilized or savage. They are all turned off the stand by one general sweeping interdict of law. Now, Sir, whatever may be the form of the constitution of Georgia, if it sanctions this act, it is a despotism. Tiberius never dictated an act in its essence more tyrannical, or in its character more unjust. And to take away the only apology that any man could offer—the incapacity of the people to testify—this very law admits their capacity, by admitting them to be witnesses if the party to the suit be resident within the Cherokee nation. But this is not the worst feature of the law, if worse can be.

By the seventh section, "all laws, ordinances, orders, and regulations of any kind whatever, made by the Cherokee Indians, in any way whatever, are declared to be null and void as if the same had never existed;" thus resolving the nation into its original elements; making as if it had never been all that combines and forms men into states, nations or tribes; dissolving all ties but those of nature. Mr. Speaker, I beg the House to realize the measure, the extent and scope of this unrivalled, outrageous act of usurped dominion. Bring it home. Let it be said to you—to the United States of America—that "all your laws, ordinances, orders and regulations, shall be null, as if they had never existed!" Let it be said by a nation that was weak when you were strong, that had grown up by your side; that had increased while you had decreased! Let a nation say it that had lived by your permission; that had pledged itself for your protection and defence! Does it change the case to change the name? Has the Cherokee no attachment to the simple forms of government he has matured and improved? to the customs and regulations of his fathers? Does he not feel? Is he not a man?

In this condition of things, the Indians applied to the President. He told them, as he tells us in his message, "That if they remain within the limits of the United States, they must be subject to the laws; that they will be protected in their possessions which they have improved, but that it seemed to him absurd and visionary to suppose their claims can be allowed to tracts of country merely because they have seen them from the mountain, or passed them in the chase." And thus the subject is presented to Congress, both by the President and the Indians, for consideration. The sympathies of the public having become interested,—for, Sir, nature is the ally of the weak against the strong—numerous memorials came in from every part of the United States, and the whole subject is referred to your committee upon Indian affairs. That committee report a bill making an appropriation of five hundred thousand dollars, *to begin with*, for the removal of the Indians to the west of the Mississippi. The chiefs say, that is no answer to their inquiry. They desire to know whether they must submit to the laws of Georgia? and to such laws? whether she has a right to abrogate their government and dissolve their nation? The President has told them they must, but has referred the subject to us. They tell us they cannot decide the question of re-

moval, until they know their rights where they are. And not only the Indian chiefs, but the American people, expect us to answer. Here is money for your removal, we say. This is the only answer we deign to give them. Well, say they, if you will not tell us directly what our rights are, will you allow us to remind you of your duties? Will you defend our boundary, and protect us where we are, as you agreed to do? The President has said he will not. They urge upon the consideration of Congress the impossibility of deciding what they will do, until they know what their condition is to be where they are—whether they must submit to such a law or not—whether they will be protected or not—whether they are to retain their lands, or whether Georgia, who has not even "seen them from the mountain, nor passed them in the chase," is to have them. Sir, they produce to you your treaty with them. Is this your signature and seal? Is this your promise? Will you keep it? If you will not, will you give us back the lands we let you have for it? The President answers, No; and the Congress of the United States answers, Here is money for your removal. We dare not, in the face of the American people, directly affirm the answer of the President; and, therefore, we evade the question, and hope to hide ourselves in the folds of this bill, when the scrutiny shall be made for us. Sir, who so blind as not to see that, by implication, direct and inevitable, you affirm the decision of the President, by giving him the means to carry that decision into effect? You decide that the Indians are the citizens of Georgia, subject to her jurisdiction, and that you will not defend their boundary, nor protect them. This you decide obliquely, at a time when the crisis in the affairs of the Indian nations, and in the affairs of your own honor, too, requires that you should speak out. You co-operate with Georgia—you give effect to her laws—you put the Indians aside, and trample your treaties with them in the dust. And it will be in vain you tell the world you did not set fire to the city, when you saw it burning, and would not put it out, though you were its hired patrol and watch.

In passing this bill, therefore, the House decide that the Indians are the citizens of Georgia, subject to the jurisdiction of Georgia; and that we cannot interfere to protect them. Now, Sir, I deny it all. I affirm the contrary. I maintain that the Indians are *not the citizens* of Georgia, nor subject to the jurisdiction of Georgia; but that they are sovereign; that we are pledged to protect them in the enjoyment of their sovereignty; and that Georgia has no right that stands in the way of it. Sir, the great men, who have gone before us in this business, were not so uninstructed in their duties as to be thus put in the wrong by those who now have the administration of affairs.

I shall not go with the gentleman from Tennessee (Mr. Bell) to the other side of the Mississippi, either for the purpose of ascertaining whether the trees can be made to grow for the use of the emigrant Indians, where none ever grew before, or whether the emigrants themselves will form a convenient barrier between our own settlements and the tribes of Indians west of them; or, if convenient, whether they may not have an objection to becoming a

breast-work to be shot at, or shot through, for our accommodation; or, in a region where there are now frequent victims to famine, whether an addition of such a promiscuous and wild population will not be likely to augment the evil. No, Sir; for if this bill pass, your faith is gone, your honor violated, and there is nothing left worth a wise man's thought.

I take the liberty to enter my protest against the appeal that has been made to party feeling in this discussion. If that is to be invoked and enlisted, the destiny of these nations is fixed. It is a spirit that has no heart, no sympathy, no relenting. Truth may pour her radiance upon its vision, and it sees not. Distress may utter her cry, and it hears not. Often has it stained the scaffold with the blood of the innocent. Nor is the sectarian influence that has been called in aid of this measure by the honorable gentleman from Georgia (Mr. Lumpkin) less to be deprecated. For, although, at this age of the world, it is not seen actually planting the stake and lighting the fires, yet it is akin to the persecutions of a former age. And it would be as much in place, in the high court of law at the other end of the capitol, to appeal to the sectarian and party feelings of the judges as a correct rule of decision, as to make the appeal to honorable gentlemen here. Sir, this is not a question upon the life or liberty of an individual, but upon the fate of nations. How then can any man, in such a case, and in such an assembly, dare to make the appeal, and hope to be forgiven! What a reflection upon the integrity and the honor of this House! Sir, it is not a party question. No man can make it such, until he can quench the last spark of honor in the breast, and stop the current of feeling in the heart, and put out the light of truth in the mind, and stifle the voice of conscience in the soul. Sir, it is our right to decide this question, it is our duty to decide it, upon principle—a right in trust for our constituents and country, and a duty imposed upon us by relations which we cannot change, and from which we cannot escape, coming down upon us from above, and springing up before us from beneath, and flowing in from all around us. Let this question, therefore, be decided upon a full and broad survey of its merits, and its merits only.

My positions are, that the Cherokees are not the tenants of Georgia, nor subject to her jurisdiction; but that they are the sole proprietors of the territory they occupy, whether as hunting grounds or otherwise, and are sovereign; and that the United States are pledged to defend their boundary, and to protect them in all their rights and privileges as a nation.

I suppose it will be admitted, that the Cherokees are a distinct class of men from the Georgians, that they were once sovereign, and that the presumption is they are sovereign still. The *onus probandi*, as the profession say, is therefore upon Georgia. If she claims the right of dictating law to this nation, once sovereign, it is for her to show whence she derived it.

With this view of the subject, I propose to go back to the origin of the State of Georgia, and briefly to trace her history to the revolution, to see what her rights then were in relation

to the Indians, as admitted and established by compact. This will preclude the necessity of inquiring as to natural rights.

In 1732, Georgia was a part of South Carolina. And in order to erect a barrier against the Indians and Spaniards in Florida, upon the frontier of South Carolina, George II., by patent, created a corporation, styled the "Trustees for establishing the Colony of Georgia in America," to hold for his use all the land between the Atlantic and the South Sea, as it was then termed, within the degrees of latitude and the boundaries therein given. No individual was to hold more than fifty acres. The command of the militia was given to the governor of South Carolina. In this patent, nothing is said of the Indians. In 1752, it was surrendered. Oglethorpe, who was the active agent of the corporation, in 1733 arrived in Georgia with a hundred and fourteen emigrants, men, women and children, and selected the site of Savannah, as the most eligible place for a lodgment, where he erected a fort. The Upper and Lower Creeks were then twenty-five thousand strong. In order to get a title to some land, he employed a female of the half blood, the wife of a trader, to whom he made liberal presents, and gave a salary of a hundred pounds a year. She assembled fifty Indian chiefs, and prepared them to accede to Oglethorpe's proposition of a treaty. They ceded, with some reservations, all the land to the head of tide-water, within the limits of the patent. That treaty admits that the Indians owned the land, and were sovereign. They were treated with as "the headmen of the Creek nation;" and the land, in express terms, is said to be theirs. "Although this land belongs to us," the Creeks say, yet, in consideration the Georgians have come for the good of our wives and children, and "to teach us what is straight," we make the cession. At Coweta, in 1739, another treaty, preceded by large presents, was made, in which the boundaries of the first cession were more particularly defined; and the trustees declare, "that the English shall not enlarge or take any other lands except those granted by the Creek nation." In 1762, at Mobile, at a convention of Indian nations, captain Steuart, the Indian agent, told them, "that the boundaries of their hunting grounds should be accurately fixed, and no settlement permitted upon them," assuring them "that all treaties would be faithfully kept." And at a meeting at Augusta, in 1763, to which captain Steuart's "talk" was preliminary, a further cession of land was made by the Creeks and Cherokees in payment of the debts they had contracted. The governors of the four southern States were present. As showing clearly how this subject was viewed by them in 1767, we find the Indians complaining to the governor of Georgia of encroachments upon their lands; and they ask him "how it could be expected of them to govern their young warriors, if he could not restrain the white people?" In 1773, they cede another tract of land; and it was then agreed, "that the bounds fixed by that treaty should be the mark of division between his majesty's subjects and the said Indian nations."

This Indian boundary limited the territory of the colonists on the west. Within this they had a right to dictate law; beyond this they had no right to do it. If they, or the king, their master, had such right, then the Indians were bound to submit. A right implies a duty. Now, who will pretend, that if the king had passed a law abrogating their customs, and making them amenable to the courts of Georgia, the Indians would not have had a right to resist? If the Cherokees were subject to the jurisdiction of Georgia, then, prior to the treaty of 1763, the Indians beyond the Rocky Mountains were, (for the charter extended to the Pacific Ocean,) some of whom had never heard of the English nation or king. Who will pretend that he had a right to subject them to his laws? He might have had the power to conquer them, but he had no right to do it. This would have been a right to rob and murder.

The Indian boundary is sometimes called the "line of ordinary jurisdiction," implying an extraordinary jurisdiction beyond it. What was that? By the right of discovery, settled by compact among the discovering nations, and since confirmed by treaties with most of the Indians themselves, the king of Great Britain had the sole and exclusive right of purchasing of the Indian nations their title to the land lying in that part of America, which had been assigned to him. We call it the right of pre-emption. The whole of his extraordinary jurisdiction consisted of the right to defend and protect that right of pre-emption. The king never attempted or claimed any thing more. I affirm, therefore, that, with this exception, the Indian boundary was the boundary of the jurisdiction of both king and colony. I affirm, further, that the Indian nations were the sole and absolute owners of the land which they had not ceded, and which lay west of the Indian boundary, subject only to this restriction upon their right of alienation. Accordingly the king, in his proclamation of 1763, disclaims any other right to it. He says, "it is but just and reasonable, and essential to our interest, &c., that the tribes of Indians who live under our protection" (as they now live under the protection of the United States) "should not be disturbed in their possessions, which, not having been purchased by us or ceded to us, are reserved to them: we do, therefore, declare that no governor or commander shall survey or grant them, and that they are reserved to the Indians." The king does not rest the right of the Indian nations to these lands upon concessions, gift, grant, indulgence, or expediency, but upon the broad and solid basis of the "justice and reasonableness" of their unalienated title; a due regard for which principles will be found always to comport with a wise policy.

Before I pass from this period, as the whites commonly speak for the Indians, it is but right, when we can, to let them speak for themselves. I refer to the negotiation at Lancaster, in 1744. The governor of Maryland claimed some of their land by possession. Canasateego replied—"When you mentioned the affair of the land yesterday, you went back to old times,

and told us you had had the province of Maryland above one hundred years. But what are a hundred years in comparison of the length of time since our claim began—since we came out of the ground? For we must tell you that, long before one hundred years, our ancestors came out of this ground, and their children have remained here ever since. You came out of the ground beyond the seas; but here you must allow us to be your elder brothers, and the lands to belong to us long before you knew any thing of them."

To Virginia, who claimed some of their lands by conquest, another chief answered—"Though great things are well remembered by us, we do not remember that we were ever conquered by the great king, or that we have been employed by him to conquer others. If it was so, it is beyond our memory. We do remember we were employed by Maryland to conquer the Conostogas; and the second time we were at war with them, we carried them all off."

The House will perceive what the views of these people were of their right to their land, and what their notions were of possession and conquest. I think it clear, therefore, that before the revolution, the Cherokees were not the citizens of Georgia, nor subject to the jurisdiction of Georgia, nor tenants at the will of Georgia.

When the troubles with Great Britain came on, Congress immediately assumed the direction of the Indian relations, as of nations distinct from the States, and independent of them. After a short session for other purposes, in the autumn of 1774, Congress met in May, 1775, and in June a committee was appointed to make an appeal to the Indian nations. They were addressed thus, by order of Congress:

"Brothers and friends; this is a family quarrel between us and Old England. Indians are not concerned in it."

In the same month, the Indian tribes were arranged into three departments; and commissioners were appointed to treat with them "in behalf of the United States, to preserve peace with them, and prevent their taking part in the commotions of the times."

In January, 1776, rules for Indian intercourse were established, interdicting all "trade with them without a license."

In 1777, another "talk" was addressed to them, reaffirming that they ought to take no part in the war between the United States and Great Britain, and stating also, that, although the "*Cherokees* had been prevailed upon to strike us, they had seen their error, had repented, and we had forgiven them, and renewed our ancient covenant chain with them."

In 1778, a treaty with the Delaware nation was concluded at Fort Pitt. The parties to it were "The United States of North America and the Delaware nation." It stipulates: That there shall be peace; and that the troops of the United States may pass "through the country of the Delaware nation," upon paying the full value of the supplies they may have. It further

provides, that, "Whereas the enemies of the United States have endeavored, by every artifice, to possess the Indians with an opinion that it is our design to extirpate them, and take possession of their country—to obviate such false suggestions, the United States guaranty to said nation of Delawares, and their heirs, all their territorial rights, in the fullest and most ample manner, as bounded by former treaties;" and they further provide for a confederacy of tribes, of which the Delaware nation was to be the head, and to have a representative in Congress.

Here is recognition enough of the rights of Indians. And, to put an end to the false suggestion, which none but an enemy could make, assurance is given, by treaty, binding upon the whole country, that their territorial rights shall be defended, in the fullest and most ample manner, as antecedently defined.

Now, Sir, let it be recollected, that, during this period, all the States, by their agents, acting under their authority and with their sanction and approbation, adopted these measures. They may, therefore, be considered a fair and decisive indication of what was then thought to be our Indian relations. In no respect were the Indians treated as citizens or subjects, but as sovereign tribes or nations, with the power of making peace or war at pleasure; much less as tenants at the will of the States—one, any, or all of them.

When the articles of confederation were adopted, in 1778, or finally by all the States, in 1781, "the sole and exclusive right and power of regulating the trade and managing all the affairs of the Indians, *not members of any of the States*," was given to the United States. In connexion with this clause is a proviso, "that the legislative right of any State *within its own limits* be not infringed or violated." The argument is, that the Cherokees were the citizens of Georgia, and subject to her jurisdiction. From this article it is clear there were Indians with whom the United States had trade to regulate, and affairs to manage, who were not members of any State. If not the Cherokees, who were they? The land from the Atlantic to the Mississippi, within the limits of the United States, was within the geographical boundary of some one of the States. According to the position of Georgia, therefore, there were no such tribes. Reliance is placed upon the proviso, as controlling the express grant; and if no effect could be given to the proviso, consistent with the grant, there might be something in the suggestion. But while the "power of entering into treaties and alliances" is given, in the same section there is a proviso, "that the legislative power of the States shall not be restrained from imposing duties and prohibiting the exportation and importation of goods." These articles were permanent; and it was not to be foreseen what these tribes might become. With the same view, the proviso in relation to them might have been adopted. Or it might have been (the term *Indians* being used, and not *Indian nations*) in order to restrain Congress from interfering with such of them as were dispersed among the

inhabitants of the States. Or, again, it might have been to restrain Congress from controlling the laws of the States in relation to the people of these Indian nations, when within the acknowledged limits and jurisdiction of the States. Or, finally, it might have been out of abundant caution, without any distinctly contemplated object. Effect enough can be given to sustain the proviso, without annulling the power granted. And this grant plainly proves that there were Indian nations or tribes, who were 'not members of any of the States;' and if so, the Cherokees do not belong to Georgia. What Congress understood by this article is clear; for, immediately after the confederation in 1781, it passed a resolve approving of the appointment of commissioners by general Greene to negotiate a treaty with the *Cherokee* Indians; and the whole course of its legislation, down to the adoption of the Constitution in 1788, shows the same thing.

In 1783, the Secretary of War was directed to notify the Indian nations, 'that the United States were disposed to enter into friendly treaties with the different tribes.' This was in May, after the peace. In September, Congress issued a proclamation, prohibiting settlements 'on lands inhabited and claimed by Indians, without the limits and jurisdiction of any particular State,' and prohibiting the purchase of such lands, without an express 'authority from the United States in Congress assembled.' What lands were these, *without* the *limits*, and without the *jurisdiction*, too, of any State? In October, Congress resolved that a convention should be holden of the different tribes, for the purpose of receiving them 'into the favor and protection of the United States,' and of establishing 'boundary lines of property to divide the settlements of the citizens from the Indian villages and hunting grounds.' In 1784, another resolve was passed, to expedite the holding of treaties; and in 1785, particularly with the Cherokees and the Indians to the southward of them. This is the resolve under which the treaties of Hopewell were held. The commissioners were appointed for the purpose of making peace; they went under the protection of an armed force; they went with presents. It was a peace we sought, not the Indian nations. After the treaties of Hopewell were concluded with the different tribes, the Indian departments were reorganized, and another resolve was passed in 1786, regulating Indian intercourse. No citizen was to reside among or trade with the Indians, without a license. And in 1788, upon application of Georgia herself, the Creeks were informed, that if they persisted in refusing to treat with the United States, an armed force would be called out to protect the frontier.

I do not find a remonstrance, or an objection even, by any of the States, to the powers assumed and exercised by Congress in relation to the Indian nations, except as to the treaty of Hopewell with the Cherokees; and that Congress enforced, notwithstanding, by a proclamation in September, 1788, deeming it a treaty binding upon the United States, and upon Georgia as one of the United States.

In this condition of things, the Constitution was adopted; and, instead of the clause in the articles of confederation, with the limitation and the proviso, a general, unlimited, unqualified power is given to Congress, 'to regulate commerce with the Indian tribes,' and as fully and unconditionally as with 'foreign nations,' or 'among the several States.'

This article in the Constitution establishes my position, that the Indians were not members of the States, nor subject to their jurisdiction; but were sovereign nations, with whom the United States had a commerce to regulate. If, as affirmed, they were members of the State of Georgia—citizens or subjects—then the grant of power was to regulate commerce among the several States and the members thereof; which is a power never claimed nor admitted. Congress deals only with States; the States with their citizens or subjects. Congress, therefore, has the power, in express terms, to prescribe all the forms of intercourse between the United States and the Indian tribes, or to interdict it altogether, as the exigency may require, in the same sense, and to the same extent, as it has with foreign nations.

In 1790, the first Indian intercourse *law*, under the Constitution, was passed, forbidding all trade between the citizens of the United States and the Indians, except by persons duly licensed. The fifth section provides, that if any citizen of the United States go into any town belonging to a nation of Indians, and there commit a crime, he shall be punished as if said crime had been committed within the jurisdiction of a State. Is not this decisive, that the Cherokees are not citizens of Georgia? nor within the jurisdiction of Georgia?

The act of 1796 defines the boundary of the Indian tribes, and makes it penal for any citizen of the United States to pass it without a license.

Another act was passed in 1799, substantially of the same import.

These acts were temporary, and the provisions of them were imbodied in the act of 1802, which was made permanent. It is now in full force, and has been, ever since its enactment. The only provisions, in either this or the antecedent acts, objected to, were a part of the fifth section of the act of 1796, relating to the forfeiture of lands, and the sixth section, punishing with death the murder of an Indian. These provisions were, among other things, the foundation of a remonstrance to Congress, by Georgia. The objectionable feature of the fifth section was omitted, and the sixth section was retained, in the act of 1802. This act has been in force, and has been enforced by all the States, as a wise and constitutional law. Well, Sir, this re-affirms the Indian boundary as then established and defined by the Indian treaties. It provides that no person shall pass it, not even the governor of Georgia, much less his bailiffs, without authority from the United States. It forbids all settlements by the whites on the Indian lands, and invests the army with power to arrest and bring offenders to punishment. It makes void all grants by Indian nations, or individuals, unless sanctioned by Congress; and it commissions the

President to see it faithfully executed. It will be perceived at a glance, that if the Indians were the citizens of Georgia, or subject to her jurisdiction, the whole range of this act is unconstitutional. Congress can make no such internal regulations among the *inhabitants* of a State as it contemplates.

The act of Georgia itself, "to extend her laws over the territory in the occupancy of the Cherokee Indians," is the most decisive proof that they were not within her jurisdiction before. The general laws of the State were without limitation. Of their own force, as soon as passed, they pervaded and covered the whole extent and circumference of her jurisdiction. And yet a special act is now necessary to give them effect among the Cherokees! Why this? Because they were not within her jurisdiction before. They were honest laws, and knew that their commission and power ceased at the Indian boundary, beyond which they had no right to go, and beyond which no citizen of Georgia could go to execute them. If Congress has power, under the Constitution, to regulate commerce with foreign nations, to say by whom, and under what restrictions, it may be carried on; to interdict it altogether, even; it has the right as to the Indian tribes. And having done it, Georgia is bound by it, unless she be above law, and so not subject to law.

She is bound also by *treaties*, which the United States have made with the Cherokees. The POWER to make treaties is in these words:

"The President shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senate concur."

The effect of treaties is declared in these words:

"All treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land, any thing in the constitution or laws of any State to the contrary notwithstanding."

It has been intimated, to get rid of the effect of our Indian treaties, that they are not treaties. What then is a treaty? Hamilton says, "Treaties are contracts with nations, which have the force of law, but derive it from the obligations of good faith"—"Agreements between a sovereign and sovereign"—another name for a bargain, but a bargain between those who are sovereign.

The treaties between the United States and the Cherokees were negotiated as treaties, and treaties between nations competent to make treaties. They were ratified as treaties. They were called treaties, not only by us, but by the French, Spanish and English, before our time. They were admitted to be treaties by Georgia. But whether treaties or not, is of no importance, because indisputably they are what was meant and intended by the term as used in the Constitution; they are the thing that was to have the power and force given to it in the Constitution, to control State laws and State constitutions. How, then, can we say to the Indian nations, that what we called treaties, and ratified as treaties, were not in fact treaties?

I will call the attention of the House to the treaty of Hopewell, in 1785. This was a treaty in force when the Constitution was adopted. It was a treaty then "made;" and "all treaties *made*, or which should *be made*," &c., were to be the supreme law of the land. These are the words of the Constitution. Georgia, by adopting the Constitution, agreed, at least, to this treaty. Nor is there the slightest foundation for the suggestion that she did not intend to affirm this treaty. Let it be recollected that this treaty was not only uniformly called a treaty, known as such, but of all other treaties, this was most likely to be distinctly in view; 1st, Because it was a subject of her remonstrance to Congress in 1786; 2d, Because the boundary to which it related had been a matter of perpetual dispute between her and the United States; and, 3d, Because, when she adopted the Constitution, the proclamation of Congress was then before the people, requiring submission to this very treaty, and calling upon the army to enforce it against the citizens of Georgia. Of all subjects, therefore, which Georgia had openly and fully in view, this was the most prominent, made so by the important contemporaneous events which affected that State individually. But, independent of all this, it is enough that it was then deemed a treaty, and, as such, was made the supreme law of the land. Now, what is it?

1. It is negotiated by plenipotentiaries on both sides.

2. The United States give peace to the Cherokees, and receive them into favor and protection.

3. A mutual restoration of prisoners, &c. is agreed upon.

4. The boundary between the Cherokees and the citizens of the United States (within "the United States of America"—the technical corporate name of the confederation, excluding the idea that the hunting grounds lay in Georgia) is stated in these terms, "the boundary allotted, &c. is and shall be the following," going on to state it. Now, Sir, what form of words can add any thing to the strength of the covenant or guaranty involved in the phrase "is and shall be," and that without limitation as to time? The guaranty in the treaty of Holston is nothing more than this. It binds the United States, and Georgia with them, and will bind forever, unless the Cherokees choose to remit the obligation.

5. The citizens of the United States who had settled, or should attempt to settle, westward of the boundary established by that treaty, are outlawed, and left to the Indians to punish as they please. What, then, becomes of the right claimed by Georgia to take possession of this whole country, and annex it to the contiguous counties of that State?

6. Congress "shall have the sole and exclusive right of regulating the trade with the Indians, and managing all their affairs in such manner as they shall think proper." This article, which has been the subject of some criticism elsewhere, is in the very words of the power given to Congress upon this particular subject, in the articles of confederation, with this difference, that, instead of saying "regulating trade and managing affairs with the Indians," it makes a wrong collocation of the words, and says, "regulating trade with the Indians, and managing all their affairs," the intent

obviously being to make the Indians agree that Congress should have the power to regulate the trade of the United States, and manage the affairs of the States, individually, or collectively, or both, with them. Congress had no power to go further. The treaties at Hopewell with the Choctaws and Chickasaws are expressed in the same terms. They were probably written by governor Blount, who attests them, and hence the similarity.

The object for which this power is given to the United States is set forth in the same article, viz: "For the benefit and comfort of the Indians, and for the prevention of injuries and oppressions on the part of the citizens." By what authority then does Georgia, in the face of this treaty, abrogate all their laws, usages and customs, subject them to her laws, and throw their country open to the inroads, injuries and oppressions of her own citizens? And what becomes of the guaranty of boundary, and of the protection the United States promised them?

7. Retaliation is not to be practised on either side, "except for a manifest violation of this treaty; and then it shall be preceded by a demand of justice; and, if refused, by a declaration of hostilities." This, Sir, looks very much like sovereignty.

I have said that this treaty was affirmed, by the adoption of the Constitution, as a "treaty made," and it is still in force. To remove all doubt upon this subject, I have only to remark, that, by the treaty of Philadelphia in 1794, at Tellico in 1798, and again in 1805, and at the Cherokee agency in 1817, by general Jackson, this treaty of Hopewell is recognised as a treaty in force, and perpetuated. But this is not all. In August, 1790, after the Constitution was adopted, Washington addressed the following note to the Senate:

"I shall conceive myself bound to execute the powers intrusted to me by the Constitution, to carry into effect and faithful execution the treaty of Hopewell, unless it shall be thought proper to attempt to arrange a new boundary with the Cherokees, embracing the settlements, and compensating the Cherokees for the cessions they shall make on the occasion." The white people had encroached upon the Cherokees contrary to the treaty of Hopewell, and the question was whether to expel them by force, or purchase the land they occupied, and so by agreement change the boundary fixed by the treaty of Hopewell. He goes on—"Is it the judgment of the Senate, that overtures shall be made to the Cherokees to arrange a new boundary, so as to embrace the settlements made by the white people since the treaty of Hopewell?" The Senate answer—"That they do advise and consent that the President cause the treaty of Hopewell to be carried into effect according to its terms; or enter into arrangements for a further cession of territory from the Cherokees, at his discretion."

Hence the House see that this treaty was not only affirmed by the Constitution, but, during the first Congress *under the Constitution*, it was recognised as a treaty in force; and without any change, except as to the boundary, which has varied with the subsequent cessions of territory, it still remains a treaty in force

It had in it no limitation as to time; and if it be not now in force, let the advocates of this bill tell us when, where, and how it was abrogated.

The treaty of Holston with the Cherokee nation, of 1791, was accordingly negotiated, by which a further cession of land was obtained, and thereby the necessity of removing the intruders obviated. A new boundary was established, of course, "and, in order to preclude forever all disputes relative to said boundary, the same shall be ascertained, says the treaty, and marked plainly." And by the seventh article, "The United States solemnly guaranty to the Cherokee nation all their lands not hereby ceded." Here the guaranty in the treaty of Hopewell is reiterated in a more distinct and solemn form; for it will be found that Washington, when he asked the advice of the Senate, to which I have alluded, and in prospect of this identical treaty of Holston, put this question, "Shall the United States stipulate solemnly to guaranty the new boundary which may be arranged?" And the Senate answer, "That in case a new boundary, other than that in the treaty of Hopewell, be made, the Senate do advise and consent solemnly to guaranty the same." Sir, treaties cannot be annulled at pleasure. There may not be good faith enough in the parties to keep them, but their obligations live. What answer can you give the Cherokee nation when now called upon to redeem this pledge? to make good your guaranty of this boundary, and to prevent the partition of their nation, and the annexation of its parts to Georgia? The President has told us, "they must submit." This bill tells us so, and tells the world so. Submit, or remove, is the language. This treaty of Holston, the ninth article, further stipulated, "that no citizen of the United States should go into the Cherokee country without a passport," the barriers of which are all prostrate, and any man may now go at pleasure into it, or over it, unless this government interpose.

Another treaty was concluded at Philadelphia in 1794, and another at Tellico in 1798, by which the Cherokees cede more land, and by which the United States, "in consideration of the cession thereby made, say to the Cherokee nation, that they will continue the guaranty of the remainder of their country forever, as made and contained in former treaties"—Hopewell, Holston, and Philadelphia. This is found in the sixth article of the treaty of Tellico. In the face of these admissions on our part, who will venture to say that the Cherokees are the citizens, the tenants at will, of Georgia? or subject to the jurisdiction of Georgia? Who does not see that they were sovereign? the sole, the admitted proprietors of the "country we guarantied to them forever"—we, the United States of America!

The same stipulations as to boundary, settlement, trade, and generally as to intercourse, are contained in these treaties, as are comprised in the law of 1802, and show conclusively, not only that the Cherokees are not subject to the jurisdiction of Georgia, but they interpose the most insurmountable obstacles to an assumption of it by Georgia. And I feel justified in affirming,

that, unless the laws of the United States, and treaties under which we hold millions of acres of land—laws and treaties never questioned until it became necessary to deny their authority to sustain this claim—are a dead letter, the sovereignty of the Cherokees is recognised, and the protection of them guarantied.

At this stage in the progress of my remarks, allow me to advert to the origin of the claim on the part of Georgia, with a view to a consideration of the settlement of it in 1802.

I have already remarked, that, at the commencement of the revolution, the Indian boundary in the different States was the boundary of their ordinary jurisdiction, and included the lands which had been purchased of the Indians, as the aboriginal proprietors of them. In the progress of the war, a question arose as to the wild lands west of the boundary, and east of the Mississippi. Some of the States, having no particular title to these lands, being severed from them by other interjacent States, had, nevertheless, a deep interest in this question. An extract from the Journal of Congress, in 1783, will show how this matter was viewed by one side, at least, at that time. It is by way of recital. "Whereas the territory (of the United States) comprehends a large extent of country lying without the lines, limits, or acknowledged boundaries of any of the United States, over which, or any part of which, no State can, or ought to exercise any sovereign, legislative, or jurisdictional faculty, the same having been acquired under the confederation, and by the joint and united efforts of all: And whereas several of the States acceded to the confederation under the idea that a country unsettled at the commencement of this war, claimed by the British crown, if wrested from the common enemy, by the blood and treasure of the thirteen States, should be considered as a common property," therefore, Resolved, &c. Nothing was done by Congress upon this proposition. The other States, however, ceded their right to these lands, under certain limitations and reservations not material to be stated, to become a common fund for the benefit of the United States.* Georgia held on, and claimed as her own, the immense and valuable tract of land lying between the Atlantic and the Mississippi, a part of which now constitutes the States of Alabama and Mississippi. This was gained by the war of the revolution, the expense of which was apportioned among the States according to "the white, black, and mulatto population," excluding Indians; and during the confederation, according to the "value of the land in each State granted or surveyed for any person," excluding the wild lands. While Virginia paid eight hundred thousand dollars, and Massachusetts eight hundred and twenty thousand, Georgia paid sixty thousand only.

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* New York ceded in 1781.
Virginia, 1784.
Massachusetts, 1785.
Connecticut, 1786.
South Carolina ceded in 1787.
North Carolina, 1789.
Georgia, 1802.

Immediately after the preliminaries of peace, Georgia undertook to fortify her claim, and passed an act declaring that the boundary of Georgia "does, and did, and of a right ought to extend to the Mississippi," resting the right to such an extent of boundary upon her charter, and the articles of confederation. The charter had been given up long before, and therefore no claim could be sustained under that; and it is clear the confederation settled nothing in relation to the title to these lands. Georgia, in her constitution of 1798, after setting forth her boundary as in the act of 1783, declares that "all the territory without the present temporary line, and within the limits aforesaid, (that is, between the Indian boundary and the Mississippi,) is now, and of right, the property of the free citizens of this State." By the same article authority is given to sell to the United States the land lying west of the Chatahooche, and to procure an extinguishment of Indian claims to the land east of that river. The boundary of the ordinary jurisdiction of Georgia—"the temporary line"—is here recognised in her constitution, and the Cherokee country as lying without that boundary, as also the right of the Cherokees thereto. The purpose of Georgia was to establish in herself the right of pre-emption, as adverse to the right claimed by the United States.

After twenty years dispute upon this subject, in 1802, commissioners mutually appointed by the United States of the one part, and Georgia of the other, settled this much agitated and long disputed subject. Georgia ceded to the United States the land west of the Chatahooche, now Alabama and Mississippi, the United States paying her one million two hundred and fifty thousand dollars, and taking it subject to certain other claims, and among them the Yazoo claim, for which we have paid about five millions. The United States ceded to Georgia the land lying east of said river, or the line of cession, whatever it was, and west of the Indian boundary, or the boundary of her ordinary jurisdiction, and engaged to extinguish the Indian title to it "as early as the same could be peaceably obtained on reasonable terms." The words of cession were, "the United States cede to the State of Georgia whatever *claim*, right or title they may have to the jurisdiction or soil of any lands," describing them. It is an assignment, or release of the right which the United States had to the jurisdiction and the soil. Now, Sir, what was that? Not a right to dictate laws to the Cherokees; not a right to cancel their laws and customs; not a right to invade, cut up, and distribute their country at pleasure. No, Sir; the United States never claimed, nor had, nor exercised that right. All our obligations to the Cherokees by treaties, laws, and long established intercourse, were incompatible with it. Not the federative obligation we were under to protect the Cherokees. That was, in no sense, a jurisdictional right, but an obligation, growing out of treaty stipulations—a trust, personal and confidential, to be exercised by the United States, and not assignable nor removable, but by the consent of the Cherokees. Nor was it intended to be "ceded;" for it has been recognised

in ten successive treaties, since the cession, as still existing in the United States. It was a trust, for assuming which the United States received an equivalent—for which they were paid. It conferred no favor, but imposed an obligation—one, therefore, that Georgia would not have been willing to receive if the United States could have transferred it. What was it, then? Simply and solely the right of pre-emption. This was all the "claim, right, or title," the United States had to the "soil." And the right to protect that right of pre-emption—to defend it, if need be, in any way in which it might be assailed—was all the claim, right or title the United States had to "jurisdiction." And these were all the United States could, or did assign, or attempt to assign, to Georgia. But this whole country was then *subject* to the Indian title, *possessed* by the Indian nations, *under* the government of the Indian laws, such as they were, and fully and absolutely, with the limitations I have named, and those not at all effecting their sovereignty. In this condition of things the United States stipulated with Georgia to extinguish the Indian title. When? When it could be done peaceably—by treaty, not force—by cession, not usurpation—with the free consent, not against the will of the Cherokees. Here was no stipulation on the part of the United States, express or implied, to adopt any expedient to hasten the extinguishment of their title, which would not be open, fair and honorable; not even when it could be done "peaceably," unless on "reasonable terms"—for a fair equivalent—not at all events and hazards;—not an obligation *absolute*, but *conditional*. And if the Cherokees refuse to sell and to leave their country, the United States are under no obligations to Georgia, other than to keep up a standing offer of reasonable terms to the Cherokees. This certainly is the case, if we subject the compact to any rule of right reason, by which contracts with individuals are governed. The land was not hers before. The compact is an admission of it. It is not to become hers until the event happens that is to make it hers; and that is the extinguishment of the Indian title. Conformably to this view both parties acted, for the twenty-six years next succeeding the compact. If Georgia be now right, the intercourse law of 1802, which was in force when her compact was made, was a direct invasion of her sovereignty. Did she ask for its repeal? No, Sir. Her courts enforced it, and have done so ever since. The treaties then existing were, also, upon her present assumption, an invasion of her sovereignty, interdicting the governor from passing a line within her own jurisdiction—from entering or leaving the city of Savannah, for example. Did she require that they should be modified or annulled? Not only no stipulation was made on this subject, when it was under examination by the commissioners, but no request even. And until very lately, she has acquiesced in them, and in ten other successive treaties of the same character, made since, taking the fruits of them without an intimation to the Indian nations that they were void, or that they were parting with their land for nothing. Now, Sir, I say this question—this long disputed, and, if you

please, vexed question—is settled; is not open to re-examination by Georgia. If there be force in law, or force in treaties, or force in contract, this question is settled, and Georgia is bound and estopped on this subject.

But, admitting the right of pre-emption to those lands to be in Georgia, without restriction or limitation, by virtue of the compact of 1802, and that *she* may extinguish the Indian title, let us see *how* she may do it under the compact, by which she claims the right to do it. This is supposing her not bound by the laws or treaties of the United States, but by the act she affirms and under which she claims.

One article of that compact was, that the ordinance of 1787, "in all its parts, should extend to the territory contained in the act of cession," except in one particular, not material here to be considered. One part of that ordinance of 1787 was, that "the *utmost good faith* should always be observed towards the Indians; their *lands* and *property* should never be taken from them without their consent: and in their *property*, *rights* and *liberty*, they never should be *invaded* or *disturbed*, unless in *just* and *lawful wars*, authorized by *Congress*; but laws founded in *justice* and *humanity* should from time to time be made, for *preventing* wrongs being done *to them*, and for preserving peace and friendship with them." Another part of the compact was, that, whenever any new States, that might be formed out of the territory so ceded, should be admitted into the Union, "it should be on an equal footing with the original States, in all respects whatever."

This article in the ordinance of 1787, in relation to the Indians, is declaratory of the rule of justice and policy to which all the States are subject, and by which they are to be governed; as the new States are to come into the Union "on equal terms with the old States in all respects whatever," entitled to the same privileges, and subject to the same duties. When, therefore, the old States require of the new "to make laws to prevent wrongs being done to the Indians,—that good faith shall always be observed, that their property, rights and liberty shall not be invaded," it is an admission that they are under the same obligations. Indeed, these are such principles of natural justice as bind all men, whether declared or not. They, at least, are not unconstitutional principles. Now, Sir, can any thing be more clear than that Georgia here admits that the Indians have land—have property—have rights—have liberty? that, in the enjoyment of them, they are never to be invaded nor disturbed? or, if at all, only in just and lawful wars authorized by Congress? This is what Georgia concedes to, and affirms of the Indians west of the line of cession—*a line that runs through the Cherokee nation*. This is what she *imposes* upon the new States as a fundamental law of their being, subject to which they come into the Union. If true of the natives of Alabama and Mississippi, is it not true also of the natives belonging to the *same nation* on the *east* as well as on the *west* side of the line of cession? of *Georgia* as well as of Alabama and Mississippi? Does this

compact make a distinction among the people of the *same tribe*? or between the lands they have seen from the mountains or passed in the chase, and those they have cultivated? The Cherokees have not only this *land*, *property*, and *liberty*, and these *rights* here spoken of, but in these they are never to be *invaded* nor *disturbed* by any State; never, *except in a war declared by Congress*. How then can Georgia extinguish the Indian title, take possession of the Indian lands without their consent, unless she violates her own compact, as well as the laws and treaties of the United States? But has she not disturbed the Cherokee nation, and invaded their property, rights and liberty? If by an act to make "all the laws, ordinances, orders and regulations of a nation," as if they had never been; if to subject the people of it to alien laws, and, at the same time, to exclude in any suit the evidence of the laws, usages and customs upon which their property, rights and liberty all rest as upon their basis, and without which there can be no property, or distinction of property, or rights, or liberty,—be not disturbing and invading their property, rights and liberty, will you tell me, Sir, what is? If this is not something more than making laws, founded in justice and humanity, to prevent wrongs being done to them, what would be?

Mr. Speaker, there is not an act of Georgia, since Oglethorpe first planted his foot upon the site of Savannah, when duly considered; there is not a resolve, ordinance or law of Congress; there is not a treaty of the United States with the Indian tribes, that does not tend to establish the fact, that the Indians are the proprietors of the lands and hunting-grounds they claim, subject only to the restriction upon their right of alienation. You might have put the question to every man in this nation, or child on the frontier, and he would have told you so, until the legislation of the States, aided by interest, instructed him otherwise. What then becomes of the tenancy at will—at sufferance, as asserted by Georgia? Not one act, law or treaty that does not establish the fact that the Cherokees are sovereign. Sir, when were they otherwise? In what field were they conquered? Produce the proof. But were there something in the shape of evidence, it would be controlled by a single, undisputed, admitted fact—here is the nation, until this invasion of it, still sovereign. There is no tradition that has not been lost in its descent, that it was ever otherwise than sovereign. The pyramids of Egypt, upon their own broad and solid foundations, are not better proof of themselves, than the Cherokee nation is of its sovereignty. Sir, the emblems* of it were sparkling in the sun, when the white men, who now inhabit Georgia, and all who ever did, were in the loins of their European ancestry; and the bird that bore these emblems aloft in the upper skies —the region that clouds never darkened—was not more the king of birds, than the Cherokees were the lords of the country in which they dwelt, acknowledging no supremacy but that of

* The feathers of the eagle.

the Great Spirit, and awed by no power but his—absolute, erect and indomitable, as any creatures upon earth the Deity ever formed.

But it is said the Constitution forbids the "erection of a new State within the jurisdiction of another State," and therefore the Cherokee government cannot be tolerated. Before I examined the subject, I was embarrassed by this consideration. But it will be found that this article was drawn with great caution and forecast, and for the very purpose of saving these little sovereignties of the aboriginal inhabitants. In the first place, as has been clearly shown in this debate, they are not a "*State*," within the meaning of the Constitution. In the next place, they are not a "new State." They were sovereignties when the Constitution was adopted. Therefore the existence and toleration of them was then as much a violation of the Constitution as it is now. According to the Georgia doctrine, the government of the United States was then bound to do what it is now doing; that is, to put an end to the Cherokee nation. In the third place, if a "new State," it is not a State formed "within the jurisdiction" of Georgia. The Constitution does not say, in the often repeated phrase, within the "chartered limits," or "geographical limits," or "limits" of Georgia. No such thing. The Indian boundary is the limit of the *jurisdiction* of Georgia. The other lines indicate the extent of country to which she claims the right of pre-emption, and, by every new purchase, of adding to her territory, and thus extending the limits of her jurisdiction.

These equivocal terms were rejected, and the word "jurisdiction" was substituted by the framers of the Constitution, extending to the Indian boundary only, and being so considered by Georgia herself, down to the time of this dispute. Now, I take it upon myself to say, that, after the adoption of the Constitution, there was no pretence for affirming that the Cherokees were within the jurisdiction of Georgia.

What the views of the framers of that instrument were in relation to these remnants of once mighty nations, I cannot say. Probably they looked forward to the time when they would melt away or mingle with the current of white population, or pass off in some other form. Certain I am it was not their intention that "in their property, rights or liberty they should ever be invaded or disturbed." This our ancestors said in 1787, and placed it on record; and Georgia said the same in 1802. The Cherokee nation is not, therefore, a new State, formed within the "jurisdiction" of Georgia.

I do not remark upon the improvement made in the Cherokee form of government; for any man of sense must see that that can make no difference. The more perfect the system, the better; and the less the trouble from it.

It has been said also, that the United States have not extinguished the Indian title to the lands in question, as agreed at the cession. I have already remarked upon the conditions of

the obligation then entered into; and it is a full answer to this complaint to say, that the United States have extinguished the title until the Indians have refused to cede another acre, and that they have been always ready and willing, and are now ready to do it, if the Indians will consent to it.

Then, again, it is said that the indisposition to sell is the result of the civilization of the Cherokees, and that that has been brought about by the agency of the government. The answer to this is, that the United States were under obligation to do what they have done, *prior* to the compact of 1802; and this was *known* to Georgia, and she took the stipulation *subject* to this obligation, which is distinctly recognised in her own compact.

Again, it has been urged against some of the treaties guarantying this country to the Cherokees, that the "just claims of the State of Georgia were prejudiced" thereby, contrary to the Constitution. This is begging the question; for Georgia has no "just claim" to the Cherokee country, and therefore none is prejudiced. Georgia has no right, constitutional or any other, that is incompatible with the engagements you have made to the Indian nations, or that is invaded by any law you have passed "to prevent wrongs being done to them, or to preserve peace and friendship with them."

Sir, you cannot take a step in the argument towards the result contended for by the friends of this bill, without blotting out a treaty, or tearing a seal from your bond. I give to the bill the connexion which it has in fact, whatever may be said to the contrary, with the laws of the States to which it is subsidiary, and with the decision of the President, that the Indians must submit or remove. Now, Sir, I say you are bound to protect them where they are, if they claim it at your hands; that you violate no right of the States in doing it, and will violate the rights of the Indian nations by not doing it; that when the United States, in consideration of the cession of land made by the Cherokees to this government, guarantied to them the "remainder of their country forever," you *meant* something by it. Sir, it is in vain to talk upon this question; impossible patiently to discuss it. If you have honor, it is pledged; if you have truth, it is pledged; if you have faith, it is pledged;—a nation's faith, and truth, and honor! And to whom pledged? To the weak, the defenceless, the dependent. *Fidem Anglorum in fœdere elegimus*, they say to you. Selecting your faith and no other,—you would not have it otherwise,—we reposed our trust and confidence in you, and you alone. And for what pledged? Wherever you open your eyes, you see it, and wherever you plant your foot upon the earth, you stand upon it. And by whom pledged? By a nation in its youth—a republic, boastful of its liberty; may it never be added, unmindful of its honor. Sir, your decision upon this subject is not to be rolled up in the scroll of your journal, and forgotten. The transaction of this day, with the events it will give rise to, will stand out upon the canvass in all future delineations of this

quarter of the globe, putting your deeds of glory in the shade. You will see it every where—on the page of history, in the essay of the moralist, in the tract of the jurist. You will see it in the vision of the poet; you will feel it in the sting of the satirist; you will encounter it in the indignant frown of the friend of liberty and the rights of man, wherever despotism has not subdued to its dominion the very look. You will meet it upon the stage; you will read it in the novel, and the eyes of your children's children, throughout all generations, will gush with tears as they run over the story, unless the oblivion of another age of darkness should come over the world, and blot out the record and the memory of it. And, Sir, you will meet it at the bar above. The Cherokees, if they are men, cannot submit to such laws and such degradation. They must go. Urged by such persuasion, they must consent to go. If you will not interfere in their behalf, the result is inevitable—the object will be accomplished. When the Cherokee takes his last look of the cabin he has reared—of the field he has cultivated—of the mound that covers the ashes of his fathers for unknown generations, and of his family and friends, and leaves all to be desecrated by the greedy and obtrusive borderer—Sir, I will not venture upon a description of this scene of a nation's exit and exile. I will only say—I would not encounter the secret, silent prayer that should be breathed from the heart of one of these sufferers, armed with the energy that faith and hope would give it, if there be a God that avenges the wrongs of the injured, for all the land the sun has looked upon. These children of nature will go to the stake, and bid you strike without the motion of a muscle; but if they can bear this; if they have reduced whatever there is of earth about them, to such a subjection to the spirit within, as to bear this, we are the men to go into the wilderness, and leave them here as our betters.

Mr. Speaker, there are many collateral arguments, bearing upon the main point of this discussion, that I intended to have urged, and many directly in my way, that I have passed over, and most of them I have but touched. But, full of interest as this question is, I dare not venture longer upon the patience of the House. At this age of the world, and in view of what the original possessors of this continent have been, and what we were, and of what they have become, and we are; any thing but the deep and lasting infamy—to say nothing of the appalling guilt—of a breach of faith with the Indian tribes. If the great men who have gone before us were so improvident, as to involve the United States in contradictory and incompatible obligations, a breach of faith with all the world besides, rather than with these our confiding neighbors. If we must be made to blush, let it be before our equals. Let there be at least dignity in our humiliation, and—something besides unmixed selfishness, and domineering cowardice, in the act that produces it.

A SKETCH OF THE

REMARKS

OF THE

HON. DAVID CROCKETT,

REPRESENTATIVE FROM TENNESSEE,

ON THE BILL FOR THE REMOVAL OF THE INDIANS, MADE IN THE HOUSE OF REPRESENTATIVES, WEDNESDAY, MAY 19, 1830.

Mr. CROCKETT said, that, considering his very humble abilities, it might be expected that he should content himself with a silent vote; but, situated as he was, in relation to his colleagues, he felt it to be a duty to himself to explain the motives which governed him in the vote he should give on this bill. Gentlemen had already discussed the treaty-making power; and had done it much more ably than he could pretend to do. He should not therefore enter on that subject, but would merely make an explanation as to the reasons of his vote. He did not know whether a man* within 500 miles of his residence would give a similar vote; but he knew, at the same time, that he should give that vote with a clear conscience. He had his constituents to settle with, he was aware; and should like to please them as well as other gentlemen; but he had also a settlement to make at the bar of his God; and what his conscience dictated to be just and right he would do, be the consequences what they might. He believed that the people who had been kind enough to give him their suffrages, supposed him to be an honest man, or they would not have chosen him. If so, they could not but expect that he should act in the way he thought honest and right. He had always viewed the native Indian tribes of this country as a sovereign people. He believed they had been recognised as such from the very foundation of this government, and the United States were bound by treaty to protect them; it was their duty to do so. And as to giving the money of the American people for the purpose of removing them in the manner proposed, he would not do it. He would do that only for which he could answer to his God. Whether he could answer it before the people was comparatively nothing, though it was a great satisfaction to him to have the approbation of his constituents.

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* That is, a member of Congress.

Mr. C. said he had served for seven years in a legislative body. But from the first hour he had entered a legislative hall, he had never known what party was in legislation; and God forbid he ever should. He went for the good of the country, and for that only. What he did as a legislator, he did conscientiously. He should love to go with his colleagues, and with the West and the South generally, if he could; but he never would let party govern him in a question of this great consequence.

He had many objections to the bill—some of them of a very serious character. One was, that he did not like to put half a million of money into the hands of the Executive, to be used in a manner which nobody could foresee, and which Congress was not to control. Another objection was, he did not wish to depart from the rule which had been observed towards the Indian nations from the foundation of the government. He considered the present application as the last alternative for these poor remnants of a once powerful people. Their only chance of aid was at the hands of Congress. Should its members turn a deaf ear to their cries, misery must be their fate. That was his candid opinion.

Mr. C. said he was often forcibly reminded of the remark made by the famous *Red Jacket*, in the rotundo of this building, when he was shown the pannel which represented in sculpture the first landing of the Pilgrims, with an Indian chief presenting to them an ear of corn, in token of friendly welcome. The aged Indian said "that was good." The Indian said, he knew that they came from the Great Spirit, and he was willing to share the soil with his brothers from over the great water. But when he turned round to another pannel representing Penn's treaty, he said "Ah! all's gone now." There was a great deal of truth in this short saying; and the present bill was a strong commentary upon it.

Mr. C. said that four counties of his district bordered on the Chickasaw country. He knew many of their tribe; and nothing should ever induce him to vote to drive them west of the Mississippi. He did not know what sort of a country it was in which they were to be settled. He would willingly appropriate money in order to send proper persons to examine the country. And when this had been done, and a fair and free treaty had been made with the tribes, if they were desirous of removing, he would vote an appropriation of any sum necessary; but till this had been done, he would not vote one cent. He could not clearly understand the extent of this bill. It seemed to go to the removal of all the Indians, in any State east of the Mississippi river, in which the United States owned any land. Now, there was a considerable number of them still neglected; there was a considerable number of them in Tennessee, and the United States' government owned no land in that State, north and east of the congressional reservation line. No man could be more willing to see them remove than he was, if it could be done in a manner agreeable to themselves; but not otherwise. He knew personally that a part of the tribe of the Cherokees were unwilling to go. When the proposal was made to them, they said, "No: we will take death here at our homes. Let them come and tomahawk us here at home: we

are willing to die, but never to remove." He had heard them use this language. Many different constructions might be put upon this bill. One of the first things which had set him against the bill, was the letter from the secretary of war to colonel Montgomery—from which it appeared that the Indians had been intruded upon. Orders had been issued to turn them all off except the heads of the Indian families, or such as possessed improvements. Government had taken measures to purchase land from the Indians who had gone to Arkansas. If this bill should pass, the same plan would be carried further; they would send and buy them out, and put white men upon their land. It had never been known that white men and Indians could live together; and in this case, the Indians were to have no privileges allowed them, while the white men were to have all. Now, if this was not oppression with a vengeance, he did not know what was. It was the language of the bill, and of its friends, that the Indians were not to be driven off against their will. He knew the Indians were unwilling to go: and therefore he could not consent to place them in a situation where they would be obliged to go. He could not stand that. He knew that he stood alone, having, perhaps, none of his colleagues from his state agreeing in sentiment. He could not help that. He knew that he should return to his home glad and light in heart, if he voted against the bill. He felt that it was his wish and purpose to serve his constituents honestly, according to the light of his conscience. The moment he should exchange his conscience for mere party views, he hoped his Maker would no longer suffer him to exist. He spoke the truth in saying so. If he should be the only member of that House who voted against the bill, and the only man in the United States who disapproved it, he would still vote against it; and it would be matter of rejoicing to him till the day he died, that he had given the vote. He had been told that he should be prostrated; but if so, he would have the consolation of conscience. He would obey that power, and gloried in the deed. He cared not for popularity, unless it could be obtained by upright means. He had seen much to disgust him here; and he did not wish to represent his fellow-citizens, unless he could be permitted to act conscientiously. He had been told that he did not understand English grammar. That was very true. He had never been six months at school in his life: he had raised himself by the labor of his hands. But he did not, on that account, yield up his privilege as the representative of freemen on this floor.* Humble as he was, he meant to exercise his privilege. He had been charged with not representing his constituents. If the fact was so, the error (said Mr. C.) is here, (touching his head) not here (laying his hand upon his heart). He never had possessed wealth or education, but he had ever been animated by an independent spirit; and he trusted to prove it on the present occasion.

* Colonel Crockett represents more voters than any member of Congress, except Mr. Duncan of Illinois. The reason is, the great influx of population since the State was formed into districts. There were 20,000 voters in colonel Crockett's district more than a year ago. There are probably more than 22,000 now.

Proclamation of the Old Congress.

In Congress, Sept. 1, 1788.—"Whereas the United States, in Congress assembled, by their commissioners, duly appointed and authorized, did, on the twenty-eighth day of November, one thousand seven hundred and eighty-five, at Hopewell, on the Keowee, conclude articles of a treaty with all the Cherokees, and, among other things, stipulated and engaged, by article fourth, 'that the boundary allotted to the Cherokees for their hunting grounds, between the said Indians and the citizens of the United States, within the limits of the United States of America, is and shall be the following, viz:' [The boundaries are here inserted.] And whereas it has been represented to Congress, that several disorderly persons, settled on the frontiers of North Carolina, in the vicinity of Chota, have, in open violation of the said treaty, made intrusions upon the said Indian hunting grounds, and committed many unprovoked outrages upon the said Cherokees, who, by the said treaty, have put themselves under the protection of the United States; which proceedings are highly injurious and disrespectful to the authority of the Union, and it being the firm determination of Congress to protect the said Cherokees in their rights, according to the true intent and meaning of the said treaty;—the United States, in Congress assembled, have therefore thought fit to issue, and they do hereby issue, this their proclamation, strictly forbidding all such unwarrantable intrusions, and hostile proceedings against the said Cherokees; and enjoining all those who have settled upon the said hunting grounds of the said Cherokees, to depart, with their families and effects, without loss of time, as they shall answer their disobedience to the injunctions and prohibitions expressed in this resolution at their peril:

"*Resolved*, That the secretary of war be, and he is hereby directed, to have a sufficient number of the troops in the service of the United States in readiness to march from the Ohio, to the protection of the Cherokees, whenever Congress shall direct the same; and that he take measures for obtaining information of the best routes for troops to march from the Ohio to Chota; and for dispersing among all the white inhabitants settled upon, or in the vicinity of, the hunting grounds secured to the Cherokees, by the treaty concluded between them and the United States, Nov. 28, 1785, the proclamation of Congress of this date."

THE SUBSTANCE OF THE

SPEECH

OF THE

HON. EDWARD EVERETT,

REPRESENTATIVE FROM MASSACHUSETTS,

DELIVERED IN THE HOUSE OF REPRESENTATIVES, ON THE BILL FOR THE REMOVAL OF THE INDIANS, WEDNESDAY, MAY 19, 1830.

Mr. Speaker: I sensibly feel the disadvantages under which I rise to address the House. Submissive as I would ever be to the will of a majority of this body, I must express the opinion, that this discussion has been urged forward somewhat too severely. It is now Wednesday. The bill was first taken up in committee of the whole on Thursday last. That and the following days were occupied by the worthy chairman of the committee on Indian affairs, in his opening exposition of the case. The hours appropriated to debate, on Saturday, were taken up by the gentleman from New York, (Mr. Storrs,) on the other side of the question. Monday was consumed by two gentlemen from Georgia, (Messrs Lumpkin and Foster,) in supporting the bill; and the gentleman from Connecticut (Mr. Ellsworth) in opposition to it. Yesterday was occupied by several gentlemen opposed to the bill; but the able argument of the gentleman from Delaware (Mr. Johns) was made when it might as well not have been made; at that hour of the day, or rather of the night, when it is impossible to bring the attention, worn down by a protracted session, to the consideration even of a subject as important as this. After a session of more than twelve hours, last night, the committee of the whole refused to rise, at the request of more than one gentleman, who expressed a wish to address them against the policy now proposed; and when the committee did rise, the bill was reported to the House. Thus, Sir, of five days given to the discussion of a bill of this vast importance, a little more than two is all that has been allowed to those, who think that it ought not to pass. The bill is now out of committee, and it is not in order to reply to any thing that has been urged in its favor. You have given us less time to discuss this all-important measure, than you devoted to the subject of a draftsman for the House. I cannot think an urgency and a precipitation like this, to be justifiable on such a subject.

It was my original purpose to attempt a formal reply to the able argument of the chairman of the committee on Indian affairs. It is not now in order to do this; nor at this hour of the day, after five hours' attendance in the House, would it be physically possible for me to make the effort. I shall confine myself to a more limited view of the subject.

But, before I proceed, I will say a word or two on the imputation of mercenary motives against some of those individuals, who, out of this House, have been conspicuous for their endeavors to enlighten the public mind on this subject. That imputation has obtained no small currency elsewhere; and has, to say the least, lost no strength, by the terms in which it has been repeated on this floor. It has been more than insinuated, that their pretended zeal in the cause of the Indians, on the score of humanity and religion, is prompted by the basest motives of selfishness; and that the annuities of the Cherokee nation have been looked to, and have been disbursed, as the reward of these pretended efforts of philanthropy.

I will not undertake a general vindication of men, whom I do not know, against a vague charge of this kind, made without the least specification of facts. If there are some, who, from unworthy motives, have affected an interest in this good cause, it is no more than happens in every other good cause. I know none such; I defend none such, if they are known to others. But with respect to the individual most meritoriously conspicuous for his efforts in this cause, (Mr. Evarts,) the author of the essays of William Penn, (so often alluded to on this floor, but which stood in no need of such mention, to give them reputation in the country,) I will say of this gentleman, that he is quite above the reach of that imputation, come it whence it may. He needs no defence against it. It cannot attach itself to him, not even as possible to be conceived of. Sir, I will go further, and say, that not a shadow of proof has been adduced, that one dollar has been expended by the Indians to procure or to compensate any exertion that has been made on their behalf. I have no belief that a dollar has been so expended by them.

I say this, because I think it due to truth and fact, and not because there would have been any impropriety in such an expenditure, applied in a proper way; and as is constantly done, by men who have large interests at stake. So far from its being improper, had I, when these troubles began, three or four years ago, been called upon by the Cherokees for my humble advice, I would, in lieu of every thing else, have advised them to retain the services, at any cost, of the ablest counsel in the United States. How can it be expected, that this friendless, unrepresented people, with no voice in our councils, no access to our tribunals, no place in our community, should, without aid, plead their own cause effectively, against the States that surround them, and the general government itself? I am only astonished that they have been able to sustain their cause as they have: and had their whole annuity been applied

for the purpose I have named, it would have been the best use that they could have made of it. Had this been done, their fate would not now be trembling on our decision, coerced under the previous question, in a midnight session.

As I have already stated, I shall not go into the constitutional argument. It has been most ably treated; and an array of authorities set forth, which has not been, and, in my judgment, cannot be shaken. I will, in passing, but add one to their number, which has not yet been cited in this House, and which shows that the principle on which this government has hitherto acted towards the Indians, and which it is now proposed to repudiate, has been incorporated, as far as it was in our power to incorporate it, into the law of nations.

In the negotiations at Ghent, the British envoys charged the government of the United States with having reduced the Indians to the state of subjects, living on sufferance within their limits, and threatened thereby with final extinction. Our commissioners (John Quincy Adams, James Bayard, Henry Clay, and Albert Gallatin) repelled this charge, and declared that the United States had followed the system practised by the settlers of New England, and William Penn, and commended by the best writers on natural law; adding that,

"Under that system, the Indians residing within the United States are so far independent, that they live under their own customs, and not under the laws of the United States; that their rights upon the lands where they inhabit or hunt are secured to them by boundaries, defined in amicable treaties between the United States and themselves; and that whenever those boundaries are varied, it is also by amicable and voluntary treaties, by which they receive from the United States ample compensation, for every right they have to the lands ceded by them."

But I pass to a narrower view of the subject. I shall treat this matter plainly and practically. I shall go into no abstractions; no refinements. I go to the substance. What is the question? It is whether, by passing this bill, we will furnish the means to carry into effect the policy "prescribed" by the executive for the removal of the Indians. Yes, Sir, prescribed; I use the word, but it is not my own. At an early stage of the session, the course for which this bill furnishes an appropriation, was, by a member of this House friendly to the bill, said to be prescribed by the President. This language, I believe, is novel on this floor. I never heard it, nor heard of it before, in any connexion with this House. I was not aware, that there existed an authority on earth, that could prescribe any thing to this House. It struck my ear; but it seemed to excite no surprise; it passed as matter of course; no one protested against it, as an infringement of the privileges of this House. I did, indeed, then almost give up the cause in despair. What hope could be left, when—organized as parties are, in and out of this House—a measure like this could be said to be "prescribed" by the Executive?

What, then, is this prescribed policy? It is to co-operate with the States, and particularly with Georgia, Alabama, and Mississippi, in removing the Indians. I name these States, for a reason that I shall presently state. I omit North Carolina and Tennessee, because the provisions of the bill do not apply to them. In the State of Tennessee, there is a large and valuable tract of land occupied by the Cherokee Indians. Those lands lie north and east of the congressional reservation line of the State of Tennessee. The United States have long since ceded their interest in them to the State of Tennessee; and whenever the Indian title to them is extinguished, it will of course be, as in similar cases it always has been, at the expense of that State. For this reason, and to prevent the provisions of the bill, as originally drafted, from applying to the States of North Carolina and Tennessee, an amendment was moved by a senator, and adopted as a feature of the bill. The amendment referred to is in these words: "within the bounds of any one or more of the States or territories, where the land claimed and occupied by Indians is owned by the United States, or the United States are bound to the State, within which it lies, to extinguish the Indian title thereto." The States of North Carolina and Tennessee have, therefore, no interest in the bill.

The bill then provides the means for co-operating with the States of Georgia, Alabama, and Mississippi, in removing the Indians within their limits. It is not a substantive measure, ending where it begins, in the legislation of Congress and the action of the general government. It is a joint policy. We are to do part, and the States to do part. We are to furnish the money, and a portion of the machinery. The great principle of motion proceeds from the States. They are to move the Indians. We are to pay the expense of the operation.

What is my warrant for such a statement? I admit, as amply as gentlemen please, that it has long been the policy of the general government to remove the Indians from their lands, if their consent could be obtained, in treaties, negotiated with them, as thus far independent societies. It is a policy we have long pursued, and with a success which, one would think, would satisfy the warmest friend of Indian cessions. We have acquired, east and west of the Mississippi, by treaties, *about two hundred and thirty millions* of acres of land. I do not wish to be understood as condemning this policy. The consideration paid to the Indians has, I believe, generally been to them a fair equivalent for the value which the land ceded possessed in their hands. But with the four southern tribes, the policy had been pushed so far, and so rapidly, that they had come to the resolution, that they would cede no more. We tried it with each tribe; through the agency of the most respectable and skilful commissioners; by the offer of the largest bribes; by the force of the most unwearied importunity. The answer came at last, in terms from one of them, and in substance from all, "that they would not cede another foot of land."

Such, no doubt, was their determination. Whether they could have adhered to it or not, is not for me to decide. At any rate, the States have not been willing to exercise patience, nor leave the event to the operation of ordinary causes. The United States, having abandoned for the present the hope of obtaining by treaty any more land from the southern tribes, and it having been determined, in the words of President Monroe, that force was not to be thought of; the matter must, under the Constitution and laws of the States, for the present, have rested where it stood three years ago. There is no way known to the Constitution and laws of the United States, by which Indian land can be acquired, but conquest in open war, and amicable agreement by treaty.

Here then the States step in, with the novel, and, as I regard it, and deem it fully proved in this debate, the unconstitutional and illegal extension of their ordinary civil and criminal jurisdiction over these tribes, accompanied with enactments peculiarly operative and oppressively binding on them. The Indians (with whom we have negotiated treaties, promising them protection) come and ask to be protected against this unheard-of assumption. They ask us to ward off the blow aimed at them; to arrest the strong arm stretched out against them. The President tells them he cannot do it. The executive government reiterates that we can not, shall not, will not give them this protection; and the President advises them to remove westward.

Now, what are these laws? I will not now specify their provisions. It is sufficient to say, in the general, that they are such, by all admission, that the Indians cannot live under them. The Indians say they cannot live under them. The Executive tells them they cannot live under them. The States evidently do not expect that they can or will live under them. The laws were, beyond all question, not passed with any such design: they are not so regarded by the Indians, nor by ourselves. For the proof of my assertion relative to the character of these laws, I refer to the message of the President, at the opening of the session; to the instructions of the secretary at war to generals Carroll and Coffee; and to the letters of these two gentlemen to the secretary. In a letter dated Winchester, (Tennessee), 2d September, 1829, governor Carroll writes as follows: "The truth is, they (the Indians) rely, with great confidence, on a favorable report on the petition they have before Congress. If that is rejected, and the *laws of the States are enforced, you will have no difficulty in procuring an exchange of lands with them.*"

I have seen an authentic account of the proceedings of the Choctaw council, lately convened to consider this subject of emigration. It was a scene, as we are told by the Mississippi papers, that could not be witnessed without tears. After the new chief had been installed in office, "he introduced to the council the subject of a removal in this way: he first stated some of the laws of Mississippi, and then inquired of them, whether they would remain where they were, and submit to these laws, or remove over the Mississippi. He also stated the substance of the last talk to them of the President of the United States. The captains and

others rose and spoke: the general sentiment was—"We are distressed—we cannot endure the laws of Mississippi—we do not think our great father loves us—we must go, as he will not help us while we remain here."

If another authority is needed, I will add that of general Coffee, in a letter to the secretary of war, dated Creek Agency, October 14, 1829: "They express a confident hope that Congress will interpose its power, and prevent the States from extending their laws over them. Should they be disappointed in this, I hazard little in saying, that the government will have little difficulty in removing them west of the Mississippi."

If the States enforce the laws, they will be glad enough to go!

The States declare they will enforce them. The Indians cry to us for protection. We tell them we will not protect them; and the consequence is, they go.

This bill is to appropriate the funds for their removal.

Such is the bill, of which we are told that there is nothing in it objectionable, that it contemplates nothing compulsory. This is the removal which is said to be voluntary. These are the laws which are said to have no connexion with the subject; into which we have been told it is irrelevant and idle to inquire!

Nothing to do with the subject! Take the bill as it is! Not to presume that Georgia, Alabama, or Mississippi, has passed, or can pass, any law that affects this question! Why, it is the very point on which the rightfulness of the measure turns. Here lies the great objection to the removal, *that it is compulsory*; an objection which we publish ten thousand copies of the report of the Indian Committee to obviate; and which is not touched, I believe, in that report. The State laws nothing to do with our legislation! Why, they are the very means on which our agents rely to move the Indians. It is the argument first and last on their tongues. The President uses it; the Secretary uses it; the Commissioners use it. 'The States have passed the laws. You cannot live under them. We cannot, and shall not protect you from them. We advise you, as you would save your dear lives from destruction, to go.'

I appeal to the House if I overstate this point.*

The question then is, Shall we nerve the arm of this State legislation, which is put forth forcibly to remove the Indians? That is the question for us to decide. It is the only question, and we are the only authority. This Congress is the only tribunal clothed with power to decide it. It depends on our vote; and it depends on nothing else. It is the business of the President to enforce our laws, not the laws of the States. He is solemnly sworn, to the best of his ability, to "preserve, protect, and defend the Constitution of the United States;" to take care that the laws *we pass* are

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* It was at the close of the debate, stated by Mr. M'Duffie, in moving the previous question, that Georgia had taken a stand, from which she would not recede, and that *if blood should flow*, it would be on the heads of those who opposed the bill.

faithfully executed; and "this Constitution, and the laws of the United States made in pursuance thereof, and all treaties, made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, *any thing in the constitution or laws of any State to the contrary notwithstanding.*"

The President, then, has no power in this matter, but to execute the laws and treaties of the United States. The great question is to be settled by us. We are to protect the Indians from this legislation, or abandon them to it. No other power on earth can do it.

Sir, it is force. The President himself authorizes us to call it force. In his message at the opening of the session, he says: "By persuasion *and force*, they have been made to retire from river to river, and from mountain to mountain." But when were any means employed to detrude the Indians, better entitled than these laws to the name of force? He does not, probably, refer to open wars against hostile nations, in which he has been himself, so beneficially for his country, and so much to his own fame, distinguished. No; I take the message to intend legislative force, moral force, *duress*, the untiring power of civilized man pushing his uncivilized neighbor farther and farther into the woods. This I take to be the force to which the President alludes. And if this kind of action, unavoidably incident to the contiguity of the two races, be justly called *force*, how much more so the legislation of which the Indians complain, avowedly instituted to effect their removal, and confessedly insupportable in its nature!

Sir, it is force. It is because it is force that our interference for protection is invoked. I know it comes in the form of law; but is not the law force? Suppose the Indians disobey the laws, (and they are no more bound to obey them than the Mexicans are,) is there no force then? Are not the sheriff, the constable, the jailer, the executioner, ministers of force? No force! A law passed over my head by a power which I cannot resist, a law intended to make me fly the country, because I cannot live under it, and I not forced to go! There was no force, then, applied against the Huguenots, by the revocation of the edict of Nantes. They had only to adopt the Catholic faith; and dragoons were sent among them to assist in their conversion. There was no force employed by the British government toward the Puritans. They needed only to conform to the established church, and they would then be safe from the visitations of the star chamber. But it was well known that these victims of power could not and would not submit; and history has recorded that they were driven by force from their native land. I do not say that the State laws are as oppressive as these odious measures of a dark and bigoted age in Europe. I do but take their admitted character, which is such that the Indians cannot live under them. The peculiar kind and degree of the disability imposed by the laws are immaterial, if, in the general result, they are, as they are admitted to be, intolerable.

I say again, then, that legal force is the most efficient and formidable that can be applied. It is systematic, it is calculated and measured to effect its end. The sovereign power sits calmly in

its council chamber, and shapes its measures most effectively to the desired object. Actual physical force is either tumultuary, as that of the mob, and, of consequence, transitory; or it is that of the military arm of the government, which, from the nature of things, is put forth only at a crisis, and to meet the exigency of an occasion. But force embodied in the form of law, a compulsory legislation, a code beneath which I cannot live, a duress which surrounds me, and pursues me, whithersoever I travel, wherever I abide; ever acting by day, ever watchful by night, coextensive with the land in which I live; Sir, I submit to this Congress of reasonable men, that it is the most effectual, and the most appalling form in which force can be applied; the most disheartening. All other force awakens a manly courage of resistance. But this deadly influence of an unfriendly legislation; this cold, averted eye of a government which has checks and restraints for you, but no encouragements nor hopes, which is intended to depress, harass, and prostrate you, beneath which you feel you cannot live, and which drives you as an outcast from your native land; this is the force which every freeman would most deprecate.

Sir, I acknowledge my mind has been strangely confounded by the propositions laid down by the executive government, and those who support its policy towards the Indians. I am ready to think that they or I have lost sight of the ordinary significancy of terms. I had supposed the general idea of the nature of *law* was settled in the common agreement of mankind. Sages, when they attempted to describe it in its highest conception, had told us, that its seat was the bosom of God, and its voice the harmony of the world. I had been taught to reverence the law as a sort of earthly Providence; as the great popular sovereign; the mild dictator, whose province it was to see that not a single subject of its sway received harm. With these conceptions, how can I understand it, when I hear that the Indians claim to be protected against the laws of the States? Protected against the laws! I thought it was the object of the law to protect every good man from all harm whatever, and even to visit on the bad man only the specific penalty of his proven offence. But protection against the law; protection against the protector! Sir, I cannot understand it; it is incongruous. It confounds my faculties. There must be fatal mischief concealed in so strange a contradiction of language.

It has been asked, in a highly respectable quarter, "What has a Cherokee to fear from the laws of Georgia?" Is it necessary for me to answer that question, and tell what a man has to fear from laws under which it is admitted he cannot live? But I will answer the question specifically; and, in the answer I give, I implore gentlemen whose duty it is to vindicate the honor of Georgia, not to understand me as casting any imputation upon it. I will say nothing which the most tender sensibility can construe into an aspersion of her honor, because I mean nothing which can be so construed. I will state, then, what a Cherokee has to fear from the laws of Georgia.

By the fifteenth section of her law of 19th December, 1829, it is provided "that no Indian, or descendant of any Indian, residing within the Creek or Cherokee nations of Indians, shall be deemed a competent witness in any court in this State to which a white person may be a party, except such white person resides within the said nation."

It would be going out of my way to dwell on the point, yet I cannot but remark, in passing, that this law makes a singular discrimination, both as respects the credibility of Indian testimony and the rights of Georgian citizens, whom it is the presumable intention of the law to protect against evidence, which cannot, in its alleged nature, be sufficiently responsible. Georgia has attached the different portions of the Cherokee country to her several adjacent counties, and made them parts of those counties. It is well known also, that, in proportion as the Cherokees have been drawn off by emigration, citizens of Georgia have advanced into the country, and numbers of them are now resident there. Against these latter, the Cherokee is a competent witness in a court of law. Here, then, we have the singular incongruity that Indian testimony is good against a Georgian citizen in one part of a county, and not good against him in the other. It is an obvious consequence of this state of things, that the same Indian, in the same court, and on the same day, is and is not a competent witness. This hour, he is, by the law of Georgia, an uncivilized pagan, possessing no religion nor superstition by which the court can bind his conscience; the next hour, he may swear away the life of any Georgian resident in the Indian country. Does not this show that the law has no foundation in any political or social necessity?

But I return to the question, What has the Cherokee to fear from this law of Georgia? He has this to fear. The citizens of Georgia, I admit, freely and cheerfully, to be as orderly, virtuous and humane a people as the citizens of any other State in the Union. I presume, however, that in Georgia, as in every other State, there are individuals, in considerable numbers, who regard the law only for its terrors; whom justice and honesty do not control, except as they are enforced by the law. Such men exist in all the States; they keep our courts of criminal jurisdiction constantly employed. In my own State, and in perhaps the most orderly community in it, the country has lately seen, with horror and astonishment, that there are men capable of atrocities which would shock the brigands of Calabria. Well, then, sir, suppose the State of Georgia to contain some such; they have but to cross the Cherokee line; they have but to choose the time and the place, where the eye of no white man can rest upon them, and they may burn the dwelling, waste the farm, plunder the property, assault the person, murder the children of the Cherokee subject of Georgia, and, though hundreds of the tribe may be looking on, there is not one of them that can be permitted to bear witness against the spoiler. When I am asked, then, what the Cherokee has to fear from the law of Georgia, I answer, that, by that law, he is left at the mercy of the firebrand and dagger of every unprincipled wretch in the community. Am I told the laws of Georgia are

kindly administered towards this people? that they have often obtained justice in the courts of Georgia? I do not doubt it; I know it, on the best authority. But the law of which I speak, is a new law; it has not yet gone into operation, and when it has gone into operation, let it be administered as mildly as you please, it cannot admit an Indian's testimony against a white man not resident in the nation.

What has a Choctaw to fear from the laws of Mississippi? He has this to fear: The fifth section of one of those laws provides, "that any person or persons who shall assume on him or themselves, and exercise, in any manner whatever, the office of chief, mingo, headman, or other post of power established by the tribal statutes, ordinances, or customs of the said Indians, and not particularly recognised by the laws of this State, shall, on conviction, upon indictment or presentment before a court of competent jurisdiction, be fined in any sum not exceeding one thousand dollars, and be imprisoned any time not exceeding twelve months, at the discretion of the court before whom conviction may be had."

Now, Sir, there is a treaty between the United States and the Choctaw nation, negotiated at Doak's Stand, not ten years ago, and signed on behalf of the United States by the present chief magistrate, and the respectable member (Mr. Hinds) from Mississippi. The thirteenth article of that treaty is as follows: "To enable the mingoes, chiefs and headmen of the Choctaw nation to raise and organize a corps of light horse, consisting of ten in each district, so that good order may be maintained, and that all men, both white and red, may be compelled to pay their just debts; it is stipulated and agreed, that the sum of two hundred dollars shall be appropriated by the United States, for each district annually, and placed in the hands of the agent, to pay the expenses incurred in raising and establishing the said corps; which is to act as executive officers, in maintaining good order, and compelling bad men to remove from the nation, who are not authorised to live in it by a regular permit of the agent."

Now, as I understand the law of Mississippi, any person who should presume to act as a chief among the Choctaws, and to exercise the authority given him by this treaty, and put in action the force which the United States not only recognise and sanction, but support and pay, would be subject to fine and imprisonment. If they come to the President, and say, Here is the treaty, and here is your own signature and seal; the President has been induced, by his official advisers, to tell them he cannot protect them, and to prison they must go, and their fine they must pay, whenever it shall be the interest of any one to drag them before the courts of Mississippi. Sir, it has been stated to me—I do not vouch for the fact, but so I have been informed—that, since the passage of this law, the whiskey traders have made their inroads into the Choctaw country; the chiefs dare not exercise their own strict laws against them, for fear of incurring the severe penalties above recited: and thus the first fruit of this State legislation has been to arrest the progress of

the reform which had commenced and made the most extraordinary progress among the nation, in that vice to which they are supposed to have the strongest natural disposition.

I have shown, Sir, what an Indian has to fear from the laws of the States. I now feel warranted in repeating, that *it is the object of this bill to appropriate a sum of money to co-operate with the States in the compulsory removal of the Indians.*

Notwithstanding all that has been said to the contrary, I pronounce this to be a new policy. We have been told that it is the established policy of the government; that many successive Presidents have recommended it; and many successive Congresses have appropriated funds to carry it into effect; and much surprise is expressed, that now, for the first time, it should meet with opposition. I maintain, on the contrary, that it is a new policy; and I challenge the proof that it is not.

Sir, I do not know that even the *voluntary* removal of the Indians was ever regularly considered and adopted by Congress, the only power competent to adopt it. I know that, from time to time, steps have been taken to effect such a voluntary removal by treaties, and that appropriations have been made to carry the treaties into effect. This is the most that has been done by Congress. I am aware that, at the second session of the eighteenth Congress, a bill passed the Senate, but was not, I believe, acted on in the House, which made an approach towards a systematic removal of the Indians; carefully guarded, however, to be purely voluntary; and this bill passed at a time before the coercion of State laws was thought of. The provisions of that bill are widely different from the provisions of the bill before us, and coincide with the judicious amendment to the latter, which the gentleman from Pennsylvania (Mr. Hemphill) has already announced the intention of offering, and for which I tender him my hearty thanks. The third section of the bill which passed the Senate in 1825 provides—

"That the President be, and he is hereby, authorized, by and with the advice and consent of the Senate, to appoint five commissioners, to receive a reasonable compensation, who shall, under his instructions, hold treaties with the Osages, the Kanzas, or any other tribe having just claims to the country, for a cession of territory westward of the State and territory aforesaid, for the purpose above specified; and to visit the Cherokees, Creeks, Choctaws, and Chickasaws, residing in North Carolina, Georgia, Tennessee, Alabama, and Mississippi; the Delawares, Kickapoos, Shawnees, Weas, Ioways, Piankeshaws, Cherokees, and Osages, residing in Missouri and Arkansas; and the Wyandots, Shawnees, Senecas, Delawares, Kaskaskias, and the Miami and Eel River Indians, residing in Ohio, Illinois and Indiana, in order to make known to them the views of the government; and, under the directions of the President, and with the consent of the Indians, to adopt such measures, and form such arrangements, or to enter into such treaties, as may be deemed proper to effect the same; and to pledge, in such manner as he may direct, the faith of the nation, as he is above authorised to do; the said commissioners to act either jointly or separately, as he may direct."

This is the nearest approach that I am aware was ever made to the enactment, by Congress, of a systematic plan for the voluntary removal of the Indians; and this, as I have said, was long before the attempt had ever been made, by the States of Georgia, Alabama, or Mississippi, to extend their laws over the Indians within their limits. That this pretension is of the most recent character, the passages cited by the gentleman from Maine, (Mr. Evans,) from the speech of the senator from Mississippi, in 1827, abundantly prove—if, indeed, the fact be not too notorious to require proof.

I therefore pronounce, again, the policy of this bill to be wholly novel. Its great distinctive element, the part to be performed by State legislation, is entirely new. It is not three years old When gentlemen tell me this is the ancient policy of the gov ernment, let them point out the laws, passed by the States, under which it was impossible for the Indians to live, and which required them to remove, in order to escape destruction. These laws cannot be pointed out. It is a new policy. The State laws are not two years old; and the refusal of the Executive of the United States to protect the Indians against them, is but a year old. On the 11th of last April, the officer at the head of the bureau of Indian affairs informs the Cherokee delegation, *by direction of the secretary of war*, "That the secretary is not now prepared to decide the question, involved in the act of the legislature of Georgia, to which you refer, in which provision is made for extending the laws of Georgia over your people after the first of June, 1830. *It is a question which will doubtless be the subject of congressional inquiry, and what is proper in regard to it will, no doubt, be ordered by that body.*"

So late, then, as the eleventh of April of the last year, the essential feature of this "ancient policy" had not received the sanction of the present Executive. On the 30th of the May following, (not yet a year,) we learn from the instructions of the department to generals Carroll and Coffee, that "in the right to exercise such jurisdiction,"—that of the States over the Indians, —"the Executive fully concurs."

It is, in my judgment, much to be regretted, that the President should have felt himself authorized to decide this question, which, about six weeks before, had been pronounced, by the secretary of war, to be a matter, in regard to which "no remedy exists, short of one, which Congress alone can supply."

On the strength of these documents, I may venture to pronounce this policy (which has been recommended to us as the ancient and established policy of the government) to be the growth of the last twelve months.

And now, Sir, let us proceed to contemplate it in some of its details. The notion which seems to accompany this plan of removal, in both the voluntary and compulsory forms, the notion, I mean, of an Indian State, to be elevated to an equality with the political members of this Union, appears to have presented itself vaguely to the old Congress. In the treaty with

the Delawares, negotiated in 1778, it is provided as follows, in the 6th article:—

"It is further agreed on, between the contracting parties, (should it for the future be found conducive for the mutual interest of both parties,) to invite any other tribes, who have been friends to the interests of the United States, to join the present confederation, and to form a State, whereof the Delaware nation shall be the head, and have a representation in Congress." It was also provided, in the treaty of Hopewell, with the Cherokees, in order "that the Indians may have full confidence in the justice of the United States respecting their interests, they shall have the right to send a deputy of their choice, whenever they see fit, to Congress."

It is unnecessary to say that these stipulations were never carried into effect. They are properly quoted, as illustrating the opinions held at that period on the subject of Indian relations. Each of these treaties existed prior to the Constitution, and was recognised by that instrument, and, consequently, by every State which adopted it, as a portion of the law of the land, "any thing in the constitution or laws of any State to the contrary notwithstanding."

When Mr. Jefferson acquired Louisiana, he conceived the idea of providing, in the upper part of it, an abode for the Indian tribes. His idea was to remove the Indians by treaty from the eastern to the western bank. "The inhabited part of Louisiana," says he, "from Point Coupée to the sea, will, of course, be immediately a territorial government, and soon a State. But above that, the best use we can make of the country, for some time, will be, to give establishments in it to the Indians on the east side of the Mississippi, in exchange for their present country, and open land offices in the last, and thus make this acquisition the means of filling up the eastern side, instead of drawing off its population. When we shall be full on this side, we may lay off a range of States on the western bank, from the head to the mouth, and so range after range, advancing compactly as we multiply."

In another letter, written 1st November, 1803, he uses still more emphatic language: "Spain is afraid of her enemies in Mexico; but not more than we are. Our policy will be to form New Orleans and the country on both sides of it into a State, and, as to all above that, to transplant our Indians into it, constituting them a *Marechaussée*, (a mounted patrol,) to prevent emigrants from crossing the river, until we shall have filled up all the vacant country on this side. This will secure both Spain and us, as to the mines of Mexico, for half a century."

I have more than one object in these citations. An attempt has been made lately, on the strength of a few garbled passages from the Journals of the old Congress, to fix on New England the odious and improbable charge of having refused to protect the west from the Indians, in order to cripple the growth of that part of the country. We here find that this policy, if ever systematically formed, is to be traced to a quarter remote from New England. Mr. Jefferson proposed, in 1803, to col-

lect the Indians on the right bank of the Mississippi, for the express purpose of forming them into an armed guard, to prevent the emigrants from crossing over.

It must be admitted that Mr. Jefferson's project was crude enough, although it was free from most of the objectionable features of the measure now proposed, and possessed some positive advantages. It contemplated no interference of State legislation, but amicable agreement by treaty, as appears by the act creating the territory of Orleans and the district of Louisiana, of the 26th March, 1804. In that act, we find the following section:—

"The President of the United States is hereby authorized to stipulate with any Indian tribes *owning* lands on the east side of the Mississippi, and residing thereon, for an exchange of lands, the property of the United States, on the west side of the Mississippi, in case the said tribes shall remove and settle thereon; but in such stipulation, the said tribes shall acknowledge themselves to be under the protection of the United States, and shall agree that they will not hold any treaty with any foreign Power, individual State, or with the individuals of any State or Power; and that they will not sell or dispose of said lands, or any part thereof, to any sovereign Power, except the United States, nor to the subjects nor citizens of any other sovereign Power, nor to the citizens of the United States."

We here see that the Congress of 1804 recognised the ownership of the Indians in the lands they occupy; and we find no trace of that coercive State legislation, which forms the great objection to the present measure. In providing, also, that the Mississippi itself, and not an imaginary line four hundred miles west of it, should be the boundary of the Indians, and that there, for half a century, they should be securely entrenched behind this mighty barrier, Mr. Jefferson certainly made a vastly better provision for their security, than we can now make. Still, however, in the idea of a successive removal of the Indians, as they should be crowded on by each new range of States, and in thus associating a place of refuge for the Indians, with the gradual extension of our own population over the same region, Mr. Jefferson evidently aimed at objects at war with each other, and attempted to promote, at the same time, two measures which were essentially at variance.

Could Mr. Jefferson have executed the first part of his plan, it might have been well for the Indians. Unfortunately for its success, the other portion of the project began instantaneously to execute itself. A principle of our political system was immediately developed far more active in its progress, far more tenacious in its hold, than any principle that could be applied to the preservation of the Indians. Our own population rushed over the river; they looked round on the broad new region as their own; their own they made it; and, before Mr. Jefferson's Indian *Marechaussée* could be organized, to keep off the emigrants, the emigrants were sufficiently numerous to embarrass the settlement of the Indians. So that, instead of procuring them an asylum for fifty years, those that were sent over

were subject to the same pressure of a rapidly increasing white population, which had borne upon them in the old States.

Sir, could it be otherwise? will it be otherwise? What! are you indeed going to abandon this region to the Indians? Mr. Jefferson's second range of States? this fine tract, as you describe it, six hundred and fifty miles long, and two hundred broad; the garden of the United States; a fine soil, well watered, rich in coal mines, and capable of being covered with forests; are you going to lock it up, in mortmain, for the Indians? Can we stop the wave of population, that flows toward it? Shall we do it? We cannot; we shall not. Precisely the same process which has gone on in the east, will go on in the west. That onward march, which neither the Alleghany Mountains, nor the Ohio, nor the Mississippi, could arrest, will not be checked by your meridian lines, nor parchment patents. If the land, as you say, is good, it will never be the policy of this government to hold the keys of the territory, and turn off the emigrants, that will claim to enter. A cordon of troops could not do it. Withhold your leave, and they will go without leave. They will boast themselves your citizens; they will soon demand a territorial government; they will next swell into a sovereign State; will extend their jurisdiction over the Indians, and drive them into Texas.

Nor was this the only difficulty in the way. The first step in this great policy of removal was met by the obvious embarrassment, that the territory west of the Mississippi, toward which the removal was to be made, was itself occupied by numerous, warlike, and powerful tribes of Indians, of a race alien from those whom it was proposed to remove. Previous, then, to removing the Indians from the left bank of the river, it became necessary to remove others from the right bank, to make way for them. What was to become, what did become of those, thus to be removed from the right bank? It would require time and sources of information not at my command to trace them into their narrowed limits, and point out particularly their fate. But the nature of things teaches us what it must have been. Driven into closer bounds, and forced upon neighboring tribes, their removal from the hunting grounds, to which they had been accustomed, on the right bank of the Mississippi, must have been the source of wars, destructive to all parties in their immediate effect, and doubly fatal in the interference of our arms, which follows as a necessary consequence.

I must pass over the various steps, taken in pursuit of this policy of removing the Indian tribes to the west of the Mississippi.* It need only be remarked here, that, as far as the Cherokees were concerned, there were two parties in that tribe, as early as 1808, when this policy began to be put in practice, with respect to them: the party which wished to emigrate, in

* They are stated at some length, in the full report of this speech.

order to keep up the pursuit of the hunter's life, and the party that wished to remain, to cultivate the arts of civilization, and to have "fixed laws and a regular government;" and the protection of the United States was equally pledged to both parties.—In the month of July, 1817, a treaty was negotiated at the Cherokee Agency, between "major general Andrew Jackson, Joseph M'Minn, governor of the State of Tennessee, and general David Meriwether, *Commissioners Plenipotentiary of the United States of America*, on the one part, and the chiefs, headmen and warriors of the Cherokee nation east of the Mississippi, and the chiefs, headmen and warriors of the Cherokees of the Arkansas river, and their deputies, John D. Chisholm and James Rodgers, duly authorized by the chiefs of the Cherokees on the Arkansas river, in open council, by written power of attorney, duly signed and executed, in presence of Joseph Sevier and William Ware." This treaty provided for a considerable cession of the lands of the Cherokees east of the Mississippi. It stipulated that, during the *month of June*, 1818, a census should be taken of those who emigrated, and those who staid behind: it guarantied the protection of the United States to both parties, reciting in the preamble the words of Mr. Jefferson, who declared, in 1808, "the United States to be the friends of both parties, and willing, as far as can be reasonably asked, to satisfy the wishes of both," and who promised, "to those who should remain, the patronage, aid, and good neighborhood" of the United States; and it provided for running the line between the portion of the territory which the Cherokees ceded, and that which they did not cede.

Such was the treaty; and it was unanimously ratified by the Senate. Among the names recorded in favor of this treaty, which was negotiated in furtherance of the purpose of the Cherokees "to begin the establishment of fixed laws and a regular government," I find the names of George M. Troup, and Charles Tait, the senators from Georgia. This purpose having been formally avowed by the Cherokee deputation in 1808, did not, of course, have its origin, as has been stated, in 1817; and the fact I have just mentioned shows, that it received, at that time, the sanction of the representatives of Georgia in the Senate of the United States.

Although it was the avowed purpose of the Cherokees to provide, by this treaty, for a separation of their community, and to leave to those who wished to stay a permanent home, "fixed laws and a regular government," yet the agents of the United States, under the instructions of the department, endeavored, with the severest urgency and pressure, to compel the whole nation to emigrate. For this reason, the taking of the census was delayed, contrary to the treaty which fixed the time when it should be taken, and the remonstrances of the Cherokees; and high pecuniary offers were held out to them, to consent to go *en masse*, or accept reservations, and become subjects of the States. It is painful to read the documents which contain the history of these transactions. After all at-

tempts to persuade and overbear them had failed, the project for the time was abandoned, the idea of taking a census given up, and a new treaty entered into on the 27th of February, 1819, by which a further cession of land was made. In the preamble to this treaty it is set forth, that "the greater part of the Cherokee nation have expressed an earnest desire to remain on this side of the Mississippi, and being desirous, in order to commence those measures which they deem necessary to the civilization and preservation of their nation, that the treaty between the United States and them, signed 8th of July, 1817, might, without further delay, or the trouble and expense of taking the census, as stipulated in said treaty, be finally adjusted, have offered to cede to the United States a tract of land *at least* as extensive as that which they probably are entitled to under its provisions."

This treaty was also unanimously ratified by the Senate, receiving in its favor the vote of Mr. Tait, the only senator from Georgia recorded as voting on the question.

The whole number of Cherokees, who emigrated to Arkansas, before the treaty of 1817, or pursuant to its provisions, is supposed to have been five or six thousand. They are believed to have suffered severely, for several years after their emigration. They immediately became involved in war with the Osages and other tribes of Indians west of the river; and when a proposal was again made in 1823, to the Cherokees, under a new commission, to cede their remaining lands, and cross the river, they refused, alleging that "the unfortunate part of our nation, who have emigrated west of the Mississippi, have suffered severely since their separation from this nation, and settlement in their new country. Sickness, wars and other fatality have visited them, and lessened their numbers; and many of them, no doubt, would willingly return to the land of their nativity, if it was practicable for them to do so, without undergoing various difficulties, which would be almost insurmountable, in so long a journey, by men, women and children, without friends and without money."

The Cherokees, having refused to cede their lands and emigrate, for the reasons in part already given, drawn from the suffering condition of their brethren in Arkansas, despatched a delegation to Washington, in 1824, to make known their determination to the government to cede no more land. This purpose they communicated to the President and secretary of war. They also addressed a memorial to the House of Representatives. In this paper they say,—"The Cherokees are informed on the situation of the country west of the Mississippi river. And there is not a spot out of the limits of any of the States, that they would ever consent to inhabit, because they have unequivocally determined never again to pursue the chase as heretofore, or to engage in wars, unless by the special call of the government, to defend the common rights of the United States. As a removal to the barren waste bordering on the Rocky Mountains, where water and timber are scarcely

to be seen, could be for no other object or inducement than to pursue the buffalo, and to wage war with the uncultivated Indians, in that hemisphere, imposing facts speak from the experience which has been so repeatedly realized, that such a state of things would be the result, were they to emigrate. But such an event will never take place. The Cherokees have turned their attention to the pursuits of the civilized man. Agriculture, manufactures, the mechanic arts, and education, are all in successful operation, in the nation, at this time; and whilst the Cherokees are peacefully endeavoring to enjoy the blessings of civilization and Christianity, on the soil of their rightful inheritance; and whilst the exertions and labors of various religious societies of these United States are successfully engaged in promulgating to them the word of truth and life, from the sacred volume of holy writ, and under the patronage of the general government, they are threatened with removal or extinction. This subject is now before your honorable body for a decision. We appeal to the magnanimity of the American Congress for justice, and the protection of the rights, liberties and lives of the Cherokee people. We claim it from the United States, by the strongest obligations, imposed on them by treaties; and we expect it from them under that memorable declaration, that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among them are life, liberty, and the pursuit of happiness."

After this positive and solemn refusal, no further direct attempt was made to carry into execution upon the Cherokees the policy of removal.

Let us now contemplate, for a moment, the situation of the Cherokees removed to the territory of Arkansas. I have already stated, in general terms, that they were immediately involved in wars with the neighboring tribes; and the statement above cited as to their unhappy condition, when made, in 1823, by the Cherokees east of the Mississippi, as a reason for refusing to emigrate, was not controverted by the commissioners of the United States. But the active benevolence of the friends of humanity, and the bounty of the government, had followed them to their new abode. The missionary establishments and schools were flourishing; and though the object for which they emigrated—that of resuming the hunter's life—seemed to be abandoned, the object of advancing in civilization was in a course of fulfilment. Meantime, however, the population of Arkansas began to press upon them, and at length it was thought necessary that they should again remove. In a letter of Rev. Mr. Washburn, from Dwight, a missionary station in Arkansas, it is stated as follows: "From the facts above detailed, it will appear, that the efforts, which have been made for the improvement of this portion of the American aborigines have not been without important results; and that among these results, it is not the least important, that the natives are led to place a high value upon education, to desire its general diffu-

sion among them, and to exert themselves for the maintenance of schools. These results, connected with the belief, that this part of the Cherokees were settled where the cupidity of our own people would not be likely to disturb them, presented to our minds the cheering prospect, that they would soon exhibit to the view of the philanthropist a most interesting spectacle—that of a people reclaimed from ignorance, barbarity, and vice, and elevated to intelligence, refinement and virtue, and surrounded with the comforts and elegancies of the useful liberal arts. We expected soon to see their country, which was lately a wilderness, covered with fruitful fields, surrounding comfortable and convenient habitations, and store-houses, and here and there decorated with edifices for literary and scientific improvement, and temples for the worship of the great and beneficent Father of all the kindred of the earth. Such, Sir, were our expectations, when we received intelligence, that, by a new convention, entered into by a delegation of the chiefs and the late secretary of war, these poor people must again relinquish their homes, their improvement, and for a time their privileges, and seek a new residence in the wilderness."

It is true that the author of this letter expresses the opinion, that this second removal will be ultimately beneficial to the Cherokees of Arkansas. He rests this opinion on the supposed security of their last retreat from further invasion, on the liberal indemnity given for their property, and on the advantageous character of the new country. But the former circumstance, as I have already stated, will infallibly lead to further encroachments. To suppose that they will be permitted long to remain unmolested, is the merest dream of fancy.

Such has been the result of the experiment of finding a "permanent home" for the Cherokees, west of the Mississippi. I pass over the history of the removal of the Quapaws, and of the attempts to remove the Choctaws, as also the memorable incidents of the Creek treaty of the Indian Springs.* It was the well known policy of the last administration to remove the Indians to the west of the Mississippi, *provided they could be brought by voluntary agreement, expressed in the usual authentic form, to go.*—In pursuit of this object, in the year 1827, a tour was made to the southern tribes by the officer at the head of the bureau of Indian affairs, under the direction of the secretary of war, and further attempts were made by him to induce the Choctaws and Chickasaws to consent to remove. His efforts were limited to persuading them to send a party to visit the country west of Arkansas; and a provisional consent was obtained of the Chickasaws, that, if the country pleased them, and could be delivered to them unencumbered by any population, and guarantied to them forever, they would remove to it. Other conditions also were attached to this provisional consent, such as

* A more detailed reference to these topics is contained in the full report of this speech.

that all their houses, mills, fences, workshops, and orchards, should be replaced by others, as good, in the new country.

Of the sort of argument by which their slow consent to these terms was obtained, the following specimen will enable the House to form an opinion:—

"Brothers: It is said, since you did not agree to the proposals of the commissioners, that you are a self-willed and obstinate people. I do not believe it; but many people, who do not know you as well as I do, may incline to think this is true. This, as far as it may be believed, will lessen the number of your friends; and these are few—*you have none to spare!*"

After repeating, in the most urgent terms, the request that they would agree to send a party of exploration, this officer adds: "If you do not, I shall still fear, *for the storm about Indian lands is terrible indeed!* I wish to screen you from it."

In pursuance of the arrangements made by colonel McKenney, a party of Chickasaws and Choctaws visited the country west of Arkansas, in company with Mr. McCoy. Of the result of this visit, I shall ask permission, before I sit down, to say a few words.

In a word, it is a proposition susceptible of proof the most clear, that the policy of removing the southern Indians has proved utterly abortive, so long as it was conducted on the only rightful and equitable principle—that of the free consent of the Indians. It is *because* their free consent could not be obtained, it is *because* it is well known that voluntarily they would never go, that the States have extended over them a coercive legislation, under which it is avowed that they cannot and will not live; and now we are asked to furnish the means to effect their *voluntary* removal.

As for the idea that this retreat west of the Mississippi is to be a safe and undisturbed abode, the facts to which I have alluded show that it is a mere mockery. We see one unfortunate remnant (the Quapaws) driven from a reservation, which, six years before, had been spared them out of a vast territory, and on the condition that their reservation should not be intruded on. We see the Choctaws assailed by a demand for more lands at the same time on both sides of the river. They are to give up on the east side, and give back on the west side, after both sides had been guarantied to them, by all the sanctions of the government. The Cherokees are enticed into Arkansas, with the assurance that the protection of the United States should follow them there. Here they are to have a permanent home. Here the arm of the white man shall not be long enough to reach them. In a few years, the advanced guard of your population is upon them; their flank is turned, their rear is cut off. The territory of Arkansas, *in which there is an estimated population of one to a square mile*, is sadly crowded; there is no room for the Indians; they must leave their settlements, just beginning to thrive, their houses, their farms, their schools and churches, and remove beyond the frontier, to a new permanent home. Two parties of Creeks have followed the ex-

ample, and gone to their permanent home, on lands just allotted to the Choctaws and Cherokees. It will probably be among their first occupations to fight for their title to this land of refuge; particularly when seventy-five thousand recruits come pouring in, (driven forward by "a few troops," who, we are told, will be needed to aid in this voluntary removal,) and who are to find their permanent home in the wilderness already granted away.

Sir, if you really do carry out this policy, its wretched objects will indeed come to a permanent home, in its execution, of a nature different from that you profess to contemplate. You will soon drive them up to that bourne from which neither emigrant nor traveller returns.

This is the effect, whatever be the provisions of the bill. But let us, Mr. Speaker, contemplate it more closely. What is, in the general, the necessary character of a measure like this, a forced removal of whole tribes of Indians from their native districts to a distant wilderness? I will give it, Sir, not in my own language, but in that of the President of the United States, at the commencement of the session:

"The condition and ulterior destiny of the Indian tribes within the limits of some of our States, have become objects of much interest and importance. It has long been the policy of government to introduce among them the arts of civilization, in the hope of gradually reclaiming them from a wandering life. *This policy* has, however, been coupled with *another wholly incompatible with its success.* Professing a desire to civilize and settle them, we have, at the same time, lost no opportunity to purchase their lands, and thrust them further into the wilderness. By this means, they have not only been kept in a wandering state, but been led to look on us as unjust and indifferent to their fate. Thus, though lavish in its expenditures upon the subject, government has constantly defeated its own policy; and the Indians, in general, receding further and further to the west, have retained their savage habits."

Such is the President's view of the effect of removing Indians westward. Those who have been removed, have been kept wandering and savage. Some, who have staid, have made great progress in civilization; but, having undertaken "the establishment of fixed laws and a permanent government," agreeably to the provisions of a treaty negotiated with them by the President himself, and approved by the Georgia senators, that State has extended laws over them which will have the effect of driving them into the wilderness; and against these laws the President cannot protect them! One scarce believes, that it is in this way that a project for a general sweeping removal of all the Indians against their will, to the distant wilderness, is to be introduced to our favorable notice.

Let us view this subject, Sir, in a practical light. Let us not talk of it by a name, but consider it as a thing. What sort of a process is it when actually gone through, this removal to the distant wilderness? The people whom we are to remove are Indians, it is true; but let us not be deluded by names. We

are legislating on the fate of men dependent on us for their salvation or their ruin. They are Indians; but they are not all savages; they are not any of them savages. They are not wild hunters. They are, at least some of the southern Indians are, *a civilized people*. They have not, in all their tribes, purged off every relic of barbarism; but they are essentially a civilized people. They are civilized, not in the same degree that we are, but in the same way that we are. I am well informed, that there is probably not a single Cherokee family that subsists exclusively in the ancient savage mode. Each family has its little farm, and derives a part, at least, of its support, from agriculture or some other branch of civilized industry. Are such men savages? Are such men proper persons to be driven from home, and sent to hunt buffalo in the distant wilderness? They are planters and farmers, trades-people and mechanics. They have cornfields and orchards, looms and workshops, schools and churches, and orderly institutions. Sir, the political communities of a large portion of civilized and Christian Europe might well be proud to exhibit such a table of statistics as I will read you.

Here Mr. Everett read "a Statistical Table, exhibiting the population of the Cherokee nation, as enumerated in 1824, agreeably to a resolution of the Legislative Council; also, of property, &c. as stated;" from which it appeared that the population was 15,560, including 1277 negroes; and that there were "18 schools in the nation, and 314 scholars of both sexes, 36 grist-mills, 13 saw-mills, 762 looms, 2486 spinning-wheels, 172 wagons, 2923 ploughs, 7683 horses, 22,531 black cattle, 46,732 swine, 2566 sheep, 430 goats, 62 blacksmiths'-shops, 9 stores, 2 tan-yards, and 1 powder-mill, besides many other items not enumerated; and there are several public roads, and ferries, and turnpikes, in the nation."

These, Sir, are your barbarians; these are your savages; these your hunters, whom you are going to expel from their homes, and send out to the pathless prairies of the west, there to pursue the buffalo as he ranges periodically from south to north, and from north to south; and you will do it for their good!

But I shall be told, perhaps, that the Cherokees are more advanced than their red brethren in civilization. They may be so; but to a less extent, I imagine, than is generally thought. What is the condition of the Choctaws? I quote a letter from one of the missionaries to that tribe, communicated to the Senate by the department of war, during the present session. After stating that a very great and general reformation of the vice of intemperance had, within a few years, taken place, Mr Kingsbury proceeds:—

"The result of a census taken in 1828 in the north-east district, was as follows, viz: population, 5627; neat cattle, 11,661; horses, 3974; oxen, 112; hogs, 22,047; sheep, 136; spinning-wheels, 530; looms, 124; ploughs, 360; wagons, 32; blacksmiths' shops, 7; coopers' shops, 2; carpenters' shops, 2; white men with Choctaw families, 22; schools, 5; scholars in the course of instruction, about 150. In one

clan, with a population of 313, who, eight years ago, were almost entirely destitute of property, grossly intemperate, and roaming from place to place, there are now 188 horses, 511 cattle, 853 hogs, 7 looms, 68 spinning-wheels, 35 ploughs, 6 oxen, 1 school, and 20 or 24 scholars.*

"Another evidence of the progress of improvement among the Choctaws is the organization of a civil government. In 1826, a general council was convened, at which a constitution was adopted, and legislative powers were delegated to a national committee and council, whose acts, when approved by the chiefs, became the supreme laws of the land. I have now before me a manuscript code, containing 22 laws, which have been enacted by the constituted authorities, and, so far as I know, carried into complete execution. Among the subjects embraced by these laws are theft, murder, infanticide, marriage, polygamy, the making of wills and settling of estates, trespass, false testimony, what shall be considered lawful enclosures around fields, &c.

"A great desire for the education of their children furnishes another proof of the advancement of the Choctaws. Petitions are frequently made requesting the establishment of new schools. Numbers more have applied for admission to the boarding-schools than could be received. Nothing is now wanting but suitable persons and adequate means, to extend the advantages of education to all parts of the Choctaw nation."

"The preaching of the Gospel has, within the two past years, been attended with very happy effects. To its influence must be ascribed much of that impulse, which has recently been given to the progress of civilization, in the more favored parts of the nation. The light which the Gospel has diffused, and the moral principles it has imparted to the adult Choctaws, have laid a foundation for stability and permanency in their improvements. In this district, eighty-two natives, principally heads of families, are members of the church. All these, with one exception, have maintained a consistent Christian character, and would do honor to any Christian community."

Nor is the condition of the Chickasaws less advanced and improving. From the official return of colonel M'Kenney, it appears that their numbers are about four thousand. They are estimated by him to possess eight hundred houses, of an average value of one hundred and fifty dollars, with some that must have cost one or two thousand. He supposes them to have 10 mills, 50 workshops, enclosures of fields to the value of fifty thousand dollars, and an average of stock to each of 2 horses, 2 cows, 5 hogs, and a dozen of poultry.

I know, Sir, that there is, in the same document on the civilization of the Indians, communicated to the Senate, (meagre at the best, compared with the ample materials for such a document, in possession of the department,) a letter which tells you that the Choctaws, except where the schools are, and where the half breeds live, are, in every sense of the word, genuine Indians. No *general* improvement in any thing appears to *pervade* the country. I will rely more on this expression of opinion, when I am better informed of the disinterestedness of its source.

Such are some of the people we are going to remove from their homes; people living, as we do, by husbandry, and the mechanic

*This is but the return of one district, doubtless less than a third of the nation.

arts, and the industrious trades; and so much the more interesting, as they present the experiment of a people rising from barbarity into civilization. We are going to remove them from these their homes to a distant wilderness. Who ever heard of such a thing before? Whoever read of such a project? Ten or fifteen thousand families, to be rooted up, and carried hundreds, ay, a thousand of miles into the wilderness! There is not such a thing in the annals of mankind. It was the practice—the barbarous and truly savage practice—of the polished nations of antiquity, to bring home a part of the population of conquered countries as slaves. It was a cruel exercise of the rights of the conqueror, as then understood, and, in turn, practised by all nations. But in time of peace, toward unoffending communities, subject to our sovereignty indeed, but possessing rights guarantied to them by more than one hundred treaties, to remove them against their will, by thousands, to a distant and a different country, where they must lead a new life, and form other habits, and encounter the perils and hardships of the wilderness; Sir, I never heard of such a thing; it is an experiment on human life and human happiness of perilous novelty! Gentlemen who favor the project cannot have viewed it as it is. They think of a march of Indian warriors, penetrating, with their accustomed vigor, the forest or the cane-brake—they think of the youthful Indian hunter, going forth exultingly to the chase. Sir, it is no such thing. This is all past; it is matter of distant tradition, and poetical fancy. They have nothing now left of the Indian but his social and political inferiority. They are to go in families, the old and the young, wives and children, the feeble, the sick. And how are they to go? Not in luxurious carriages; they are poor. Not in stage coaches; they go to a region where there are none. Not even in wagons, nor on horseback, for they are to go in the least expensive manner possible. They are to go on foot; nay, they are to be driven by contract. The price has been reduced, and is still further to be reduced. It is to be reduced by sending them by contract. It is to be screwed down to the least farthing, to eight dollars per head. A community of civilized people, of all ages, sexes and conditions of bodily health, is to be dragged hundreds of miles, over mountains, rivers, and deserts, where there are no roads, no bridges, no habitations; and this is to be done for eight dollars a head; and done by contract. The question is to be, What is the least for which you will take so many hundred families, averaging so many infirm old men, so many little children, so many lame, feeble and sick? What will you contract for? The imagination sickens at the thought of what will happen to a company of these emigrants, which may prove less strong, less able to pursue the journey, than was anticipated. Will the contractor stop for the old men to rest, for the sick to get well, for the fainting women and children to revive? He will not; he cannot afford to. And this process is to be extended to every family, in a population of seventy-five thousand souls. This is what we call the removal of the Indians!

It is very easy to talk of this subject, reposing on these luxuri-

ous chairs, and protected by these massy walls, and this gorgeous canopy, from the power of the elements. *Removal* is a soft word, and words are delusive. But let gentlemen take the matter home to themselves and their neighbors. There are 75,000 Indians to be removed. This is not less than the population of two congressional districts. We are going, then, to take a population of Indians, of families, who live as we do in houses, work as we do in the field or the workshop, at the plough and the loom, who are governed as we are by laws, who send their children to school, and who attend themselves on the ministry of the Christian faith, to march them from their homes, and put them down in a remote, unexplored desert. *We* are going to do it—this Congress is going to do it—this is a bill to do it. Now, let any gentleman think how he would stand, were he to go home and tell his constituents, that they were to be removed, whole counties of them—they must fly before the wrath of insupportable laws—they must go to the distant desert, beyond Arkansas—go for eight dollars a head, by contract—that this was the policy of the government—that the bill had passed—the money was voted—you had voted for it—and go they must.

Is the case any the less strong because it applies to these poor, unrepresented tribes—"who have no friends to spare?" If they have rights, are not those rights sacred—as sacred as ours—as sacred as the rights of any congressional district? Are there two kinds of rights, rights of the strong, which you respect because you must, and rights of the weak, on which you trample, because you dare? I ask gentlemen again to think what this measure *is*, not what it is called: to reflect on the reception it would meet with, if proposed to those who are able to make their wishes respected, and especially if proposed to them *for their good*. Why, Sir, if you were to go to the least favored district in the Union—the poorest soil—the severest climate—the most unhealthy region, and ask them thus to remove, were it but to the next State, they would not listen to you; they would not stir an inch. But to take up hundreds and thousands of families, to carry them off unmeasured distances, and scatter them over a wilderness unknown to civilized man—they would think you insane to name it!

What sort of a region these unhappy tribes are to be removed to I will presently inquire. Let us see what sort of a region they are to leave.

And now, Sir, I am going to quote an account, which I candidly admit to be in all likelihood over stated. It proceeds from a patriotic native pen; and who can rest within the limits of exact reality, in describing the merits of a beloved native land? I believe it a little colored, but the elements of truth are there. It is plain, from the circumstance and detail, that it is substantially correct. At any rate, since I have been a member of Congress, it has been twice, and I believe three times, communicated from the war department, as official information. It is from a letter written by David Brown, a native Cherokee, of mixed blood, dated Willstown, Cherokee Nation, September 2, 1825:—

"The Cherokee nation, you know, is in about 35 degrees north latitude; bounded on the north and west by the State of Tennessee;

on the south by Alabama, and on the east by Georgia and North Carolina. This country is well watered; abundant springs of pure water are found in every part. A range of majestic and lofty mountains stretch themselves across the nation. The northern part of the nation is hilly and mountainous. In the southern and western parts, there are extensive and fertile plains, covered partly with tall trees, through which beautiful streams of water glide. These plains furnish immense pasturage, and numberless herds of cattle are dispersed over them. Horses are plenty, and are used for servile purposes. Numerous flocks of sheep, goats, and swine, cover the valleys and hills. On Tennessee, Ustanala, and Canasagi rivers, Cherokee commerce floats. The climate is delicious and healthy; the winters are mild; the spring clothes the ground with its richest scenery. Cherokee flowers, of exquisite beauty and variegated hues, meet and fascinate the eye in every direction. In the plains and valleys, the soil is generally rich, producing Indian corn, cotton, tobacco, wheat, oats, indigo, sweet and Irish potatoes. The natives carry on considerable trade with the adjoining States; and some of them export cotton in boats down the Tennessee, to the Mississippi, and down that river to New Orleans. Apple and peach orchards are quite common, and gardens are cultivated, and much attention paid to them. Butter and cheese are seen on Cherokee tables. There are many public roads in the nation, and houses of entertainment kept by natives. Numerous and flourishing villages are seen in every section of the country. Cotton and woollen cloths are manufactured here. Blankets of various dimensions, manufactured by Cherokee hands, are very common. Almost every family in the nation grows cotton for its own consumption. Industry and commercial enterprise are extending themselves in every part. Nearly all the merchants in the nation are native Cherokees. Agricultural pursuits (the most solid foundation of our national prosperity) engage the chief attention of the people. Different branches in mechanics are pursued. The population is rapidly increasing."

Such is the land, which at least one large community of these Indians are to leave. Is it not too much for human nature to bear, that unoffending tribes, for no alleged crime, in profound peace, should be rooted up from their hereditary settlement, in such a land, and hurried off to such an one as I shall presently show to the House?

Sir, they are attached to it: it is their own; and though, by your subtilties of state logic, you make it out that it is not their own, they think it is; they love it as their own. It is the seat of their council fires, not always illegal, as your State laws now call them. The time has been, and that not very distant, when, had the king of France, or of Spain, or of England, talked of its being illegal for the Choctaws or Cherokees to meet at their council fire, they would have answered, "Come and prevent us." It is the soil in which are gathered the bones of their fathers. This idea, and the importance attached to it by the Indians, have been held up to derision by one of the officers of the government. He has told the Indians that "the bones of their fathers cannot benefit them, stay where they are as long as they may."* I

* Proceedings of the Indian Board, in the City of New York, with Colonel M'Kenney's Address, page 42.

touch with regret on that, upon which the gentleman from New York has laid his heavy hand. I have no unkind feeling towards the gentleman, who has unadvisedly made this suggestion. But the truth is, this is the very point on which the Indian race —sensitive on all points—is most peculiarly alive. It is proverbial. Governors Cass and Clark, in their official report the last winter, tell you, that "We will not sell the spot which contains the bones of our fathers," is almost always the first answer to a proposition for a sale. The mysterious mounds which are seen in different parts of the country, the places of sepulture for tribes that have disappeared, are objects of reverence to the remnants of such tribes as long as any such remain.

Mr. Jefferson, in his Notes on Virginia, tells you of such a case. Unknown Indians came through the country, by a path known to themselves, through the woods, to visit a mound in his neighborhood. Who they were no one knew, nor whence they came, nor what was the tribe to whose ashes they had made their pilgrimage. It is well known that there are tribes who celebrate the great feast of the dead—an awful but affecting commemoration. They gather up the bones of all who have died since the last return of the festival, cleanse them from their impurities, collect them in a new deposit, and cover them again with the sod. Shall we, in the complacency of our superior light, look without indulgence on the pious weakness of these children of nature? Shall we tell them that the bones of their fathers, which they visit after the lapse of ages, which they cherish, though clothed in corruption, can do them no good? It is as false in philosophy as in taste. The man who reverences the ashes of his fathers—who hopes that posterity will reverence his—is bound by one more tie to the discharge of social duty.

Now, Sir, whither are these Indians, when they are removed, to go? I confess I am less informed than I could wish. I thank the gentleman from Pennsylvania (Mr. Hemphill) for his amendment. It does credit to his sagacity. It is just what is wanted. I say, we all want information. We are going, in a very high-handed way, to throw these Indians into the western wilderness. I call upon every gentleman, who intends to vote for the bill, to ask himself, if he has any satisfactory information as to the character of that region. I say it is a *terra incognita*. It has been crossed, but not explored. I have made some notes of this country, and it is the conclusion to which I have come, from consulting the best authorities within my reach, and particularly colonel Long and Mr. Nuttall, that it is an uninhabitable desert.

The gentleman from Ohio, (Mr. Vinton,) the other day, moved a resolution asking for information on this subject. The House felt that it wanted the information: his resolution was adopted. And what did we get in reply? *Twenty-two lines*, from a letter written by governor Clark, five years ago? and he had never seen the country, to which the title of the Osages and Kanzas had, when he wrote the letter, just been extinguished. This is the official information which is to guide us in deciding the fate of thousands and tens of thousands of fellow-beings! Then we

have the testimony of Mr. McCoy. He saw the country. But how much did he see of it?—how far did he go westward? Forty-eight miles only. He admits that the land is good only for two hundred miles west from Arkansas; and three quarters of this he took on trust, for he went only forty-eight miles into it, in a westerly direction. Is this an exploration on which we can depend—a hasty excursion, for a few miles, into the district, to which we are to transplant the Indians? Sir, it would do to write a paragraph upon in a newspaper; it would serve as a voucher for an article in the gazetteer. But, good heavens! will this warrant us in taking up dependent tribes of fellow beings from their homes, and marching them, at a venture, into this remote desert, upon the borders of which an agent had just set his foot? From the time that Mr. McCoy left St. Louis till he got back, there were just *sixty-two days*. His description is as follows; and I quote the passage because it contains the strength of his recommendation :—

"I may not be so fortunate as to meet with many who concur with me in opinion relative to the country under consideration, (I mean the whole described in our remarks,) yet I hesitate not to pronounce it, in my estimation, very good, and well adapted to the purposes of Indian settlements. I think I risk nothing in supposing that no State or territory in the Union embraces a tract, of equal extent and fertility, so little broken by lands not tillable, to that lying south of Kanza, and on the upper branches of Osage and Neosho, the extent of which I have not been able to ascertain. This country also has its defects, the greatest of which is *the scarcity of timber;* but, by a judicious division among the inhabitants of woodland and prairie, there will be found a sufficiency of the former, in connexion with *coal*, to answer the purpose in question with *tolerable convenience*."

Again : "The greatest defect in this country (and I am sorry it is of so serious a character) is the scarcity of timber. If fields be made in the timbered land, which most persons, who have been accustomed to timbered countries, are inclined to do, (the Indians more especially, because often unprepared with teams for breaking prairie,) timber will soon become too scarce to sustain the population, which the plan under consideration contemplates. I trust that I need offer no apology for supposing that measures ought to be adopted immediately, for marking off to each settler, or class of settlers, the amount of timbered land really necessary for their use, severally, and no more. The timber, generally, is so happily distributed in streaks and groves, that each farm may be allowed the amount of timber requisite, and then extend back into the prairie for quantity. The prairies being almost universally rich, and well situated for cultivation, afford uncommon facilities for the operation of such a method. By pursuing this plan, wood, after a few years, will increase in quantity annually, in proportion as the grazing of stock and the interests of the inhabitants shall check the burning of those prairies. These regulations, essential to the future prosperity of the territory, cannot be made without the existence of the superintendency of which I speak. Let it be said that the country within such and such boundaries shall be given to the Indians, for the purpose under consideration. Next establish such a course of things as will render it possible to make a fair distribution of it among its inhabitants, in view of their numbers and circumstances, and which will secure to them the possibility of future prosperity."

I believe, Sir, that Mr. McCoy is a very worthy and benevolent person. Having been connected with a mission to some north-western band of Indians, which has been nearly or quite broken up by the encroachments of whites, he appears to have considered *removal* as the greatest good for all Indians, under all circumstances. While the Indians, whom he conducted, were evidently dissatisfied with the country, he makes the best of it. He was there a very short time, and penetrated a short distance, but tells us "the prairies are *almost universally* rich," and that even the single farms can be laid off with a patch of woodland. He could not possibly know this to be true. He saw as much of this country as a traveller would see of Pennsylvania, Maryland and Virginia, who should go by the straightest road from Philadelphia to Harper's Ferry, and thence back to Washington. This region is said to be six hundred miles long and two hundred and fifty broad. Mr. McCoy's whole line of march within it, going and returning, was about four hundred miles!

As for the project of settling each Indian family under a government superintendency; persuading them to spare the wood; counting out such a number of trees as is absolutely necessary; and thus making provision "for the possibility of future prosperity," and for "tolerable convenience" in respect to fuel, it defies gravity. The wildest delusions by which waste lands in distant countries are puffed off by jobbers do not go beyond this. One coarse fact, like that which I have already cited from Mr. Nuttall, showing the wretched shifts to which the Osages were put for fuel,* is worth a volume of these well-meaning speculations on the providence, thrift and foresight of the Indians, in husbanding their timber. This incontestable want of timber in the region in question would make it uninhabitable to the thriftiest people on earth. Sir, mere benevolence, piety, and zeal, do not qualify a person to promulgate opinions which are to affect the well-being and lives of thousands of fellow men. You tell an Indian, shivering in the winter, over the wretched substitute for fuel which Mr. Nuttall describes, that there is a "possibility," some years hence, of his having wood enough to enable him to get along with "tolerable convenience," if he is very provident in the mean time!

What are the Indians to do after they get here? The original plan of going over the Mississippi was to find ample range for the chase. That object was sanctioned by Mr. Jefferson, in 1808, when proposed by the emigrating portion of the Cherokees. It now seems abandoned; and we are told of raising their character, of putting them on an equality with ourselves, and fixing them in snug farms of so much woodland and so much prairie. Can they pursue their accustomed occupations in this new region? Can any man on his responsibility say, they will find wood and water, and soil, and access to market, and convenience of navigation, like what they have left? No man can

* The use of bisons' ordure.

say it. What does experience teach? The Cherokees in Arkansas, after encountering great hardships, were doing well, and, after ten years' residence, have been pushed further westward. A lavish expenditure by the government, and the untiring benevolence of the pious and liberal, has re-established them in seeming comfort; but the result is yet to be seen. We are already threatened with a general Indian war on the frontier. But the case of the Cherokees of Arkansas is the only one, which is not a deplorable failure. What says general Clark, writing to the department, 10th December, 1827? "I must request you to draw the attention of the secretary of war to the moving or emigrating Indians, who are continually coming on to this side of the Mississippi. Those that have come on, and not permanently settled, (many of them,) are scattered for the purpose of procuring subsistence; and frequent complaints are made against them by the white people, and considerable expense incurred in reconciling the difficulties."

This "scattering to procure subsistence," (leading to complaints, by the whites, and expense in reconciling difficulties,) I take to be a periphrasis for *roving about, begging and stealing*. Again: "The tribes on this side of the Mississippi are wretched, and moving from place to place. I have just heard that the several scattering bands, who resided near Fort Towson, have removed near Alexandria on the Red river."

"It will be necessary, that authority be given as soon as possible, to exchange lands with the Delawares, Kickapoos, Shawnees, Piankishaws, &c., and settle them on the Kanzas river. And it is also necessary, that some assistance should be given to remove them there, and, when there, to assist them in preparing the earth for cultivation and provisions, till they can raise a support. Without this aid, the Indians will be more wretched than they were before they moved.

"The Shawnees and Delawares of Cape Girardeau, who were, twenty years ago, doing well, with good houses, little farms, with stock in abundance, are now in distress, roving in small parties in every part of the country, in pursuit of subsistence. Those who have come from Ohio will, if not supported, in a short time be in the same situation.

"The distresses of the Indians of this superintendency are so great and extensive, and complaints so frequent, that it is and has been impossible for me to report them. I therefore have taken on myself a great deal in acting as I thought best; I have not troubled the government with numerous occurrences which they could not remedy."

Sir, general Clark is your most experienced superintendent of Indian affairs; and his superintendency lies in this vaunted Indian Canaan, beyond the Mississippi. Let us learn wisdom from the fate of the Shawnees and Delawares, who, in twenty years, have sunk from the possession of comfortable farms and competence, to abject, roving poverty. One statement more from an official letter of general Clark, of March 1, 1826, and I leave this topic:—

"The condition of many tribes west of the Mississippi is the most pitiable that can be imagined. During several seasons in every year, they are distressed by famine, in which many die for want of food, and during which the living child is *often* buried with the dead mother,

because no one can spare it as much food as would sustain it through its helpless infancy. This description applies to the Sioux and Osages, and many others; but I mention those because they are powerful tribes, and live near our borders, and my official station enables me to know the exact truth. It is vain to talk to people in this condition 'about learning and religion.' "

This is the country to which the Indians are to be moved. This is the fertile region, in which they are to be placed. This their prospect of improvement.

The worthy chairman of the committee told us of the causes of their degeneracy, seated in the nature or in the habit, the second nature of the Indians. Admit the truth of the representation. I am sorry there is any foundation for it. My hopes have never been over sanguine of elevating the race to a high degree of civilization; although within a few years better hopes have been authorized than ever before. But these causes of degeneracy exist. The Indians, it is said, suffer from the proximity of the whites, and the jealousy and hostility between them, and the conscious inferiority of the Indian. But this is not remedied west of Arkansas: they will have a white population crowding on them there. There is one already. We are told they are improvident. Be it so; will they not be improvident there? Mr. McCoy tells us, this happy land has but little timber, and yet thinks that, if left to themselves, they would go in and cut it down; and that there must be a sort of government forester, to parcel it out for them, and keep them from wasting it. We are told they have an innate propensity to intemperance. Will they cease to have it in the wilds of Arkansas? If they thirsted for spirits by the pleasant banks of the Ustanala and Coosawattee, will they abstain in the salt prairies and parched deserts of the west? What safeguard will they have there, which they have not here? Surely, Sir, as they are removed from a surrounding civilization, as they cease to breathe the very temperate atmosphere of the Atlantic States, there is reason to fear, that the causes of degeneracy will remain in all their intensity, while the checks will be fewer, and the remedies weaker.

I have already hinted that this great project fails in the point put forward as its recommendation—the *permanency* of the new abode. There is no well-grounded hope of permanency in it, and our experience shows that it is delusive. The Cherokees of Arkansas were permitted to remain just ten years! If the lands to which you remove them are what you describe them to be, you may as well push back the tide in the bay of Fundy as keep out the white population. Its progress onward is sure, and as surely will it push the Indians before it. This new wilderness, which you parcel out to them, is not a permanent home. It is a mere halting place—a half-way house on the road to the desert.

We talk of pledges, guaranties, and patents. Now, Sir, I have not the least doubt of the good faith of the President, of his cabinet, of every gentleman in this House friendly to the bill, and of every honest man in the community who supports it. They all honestly mean that the Indians should be safe in their

new residence; and if they are not safe, it will not be the fault of the friends of the bill. Having said this, I must be permitted to add, that I would not give one farthing for the best patent that could be issued to this new country, with the seal of every member of the government. I would not pick up the unmeaning scroll from the earth. What! take a patent to secure my title west of the Mississippi, when fifty treaties on the east side, signed by all your Presidents, sanctioned by all your Congresses, have proved themselves not worth what it cost to engross them! I would regard the offer of it as an insult. Treaty and patent; what is the difference, save that the former is the more solemn and authentic pledge of the public faith? Are they not both of the like parchment, signed and sealed? What is there in a patent to give it a binding power? Is there any principle of obligation in it? any life or voice to upbraid its violators? There is nothing in it. It is a word, a name. It signifies nothing—it can do nothing. It is meant well—and that *is* well—and that is all.

But, Sir, these Indians could not live in this country, not even if your advancing population would let them alone, and the country itself were a pretty good one. It requires some of the highest qualities of civilized man to emigrate to advantage. I do not speak of great intellectual elevation; not of book learning, nor moral excellence; though this last is of great importance in determining the prosperity of a new settlement. But it is only the chosen portion of a community, its *élite*, that can perform this great work of building up a new country. The nervous, ardent young man, in the bloom of opening life, and the pride of health, can do it. It is this part of the population that has done it. This is the great drain of New England and the other Atlantic States. But to take up a whole population; the old, the feeble, the infant, the inefficient and helpless, that can hardly get through life any where, to take them up by a general operation, and scatter them over an unprepared wilderness, is madness. It is utterly impossible for them—I do not say to prosper—but even to subsist. Such a thing was never heard of. How narrowly did the pilgrims of New England escape destruction, although their ranks were made up of men of the sternest moral qualities, well provided with pecuniary resources, and recruited for several years by new adventurers! The Indians are to be fed a year at our expense. So far is well, because they will not starve that year. But are the prairies to be broken up, houses built, crops raised, and the timber brought forward in one year? Sir, if a vigorous young man, going into the prairie and commencing a settlement, can raise a crop to support himself the second year, I take it he does well. To expect a community of Indian families to do it, is beyond all reason. The chairman of the committee tells us, it would be cruel to cast them off at the end of one year; they must be helped along. Doubtless they must. And in the progress of this way of living, partly by the chase, partly by husbandry, and partly by alms, if a people naturally improvident do not speedily become degene-

rate and wretched, they will form an exception, not merely to all their brethren, with a single exception, who have preceded them in this course, but the laws of nature. The earnest volition to go is the great spring of the emigrant's success. He summons up his soul, and strains his nerves, to execute his own purpose; but drive a heart-sick family, against their will, from their native land; put them down in a distant wilderness, and bid them get their living, and there is not one chance in fifty that they would live two years. While you feed them they will subsist, and no longer. General Clark tells you, that those who were in comfort twenty years ago must now be fed. Sir, they cannot live in these dismal *steppes*. They must starve; we know they must. General Clark tells us they do starve; and when the mother starves to death, they put the living child into the grave with her! To palliate this terrific occurrence, we are told it is common, it is incident to Indian life. But not surely among the southern Indians. And if it is meant only that it is common beyond the Mississippi, then what an image does it not give us of the country into which we are driving these victims! If it were not as sterile as the desert of Arabia, it would yield enough to prevent the recurrence of such horrors.

View this subject in another light. What is to keep these Indians from coming into collision with each other? Mr. Nuttall was instantly struck with this danger; and numerous facts and occurrences stated by him show how justly we may apprehend the effects of what he calls "the imprudent and visionary policy of crowding the natives together, in the hopes of keeping them at peace."

These 75,000 Indians, whom you propose to collect in this region, are not one tribe; they are not cognate tribes. We are told, in some of the papers which have been laid on our tables, that the four southern tribes speak the same language. It is not so. The Choctaws and Chickasaws speak substantially the same; the Creeks speak a different language, and the Cherokees still another. With these southern tribes and the northwestern, there is no affinity. There are between various tribes of Indians hereditary feuds. Mr. McCoy's Indians were at war with the Osages, and had been for years. You put them down side by side. You bid them hunt in the same waste. You grant the same land two or three times over to different tribes. The lands granted to the Cherokees of Arkansas had been in part given, the year before, to the Creeks. The Chickasaws are to be put down on the Choctaw lands. The new Cherokee territory runs over the reservation of the Kanzas and Osages; and into this territory, thus pre-occupied, you are going to pour down from fifty to seventy-five thousand more. I will cite, on this subject, a paragraph from an Arkansas paper. I pretend not to claim for it any other weight, than what it derives from the manifest reasonableness of its purport:—

"*Proposed residence of the Indians.* The whole country west of Missouri and Arkansas (including the forty miles severed from the lat-

ter) is already parcelled out to the different tribes that now occupy it. The Cherokees and Creeks are already murmuring on account of their restricted limits, and complain that the government has assigned to both the same tract of country. The productions of the habitable parts of the country, under the careless culture of the Indians, will be found not more than sufficient to supply the wants of the present population. If the proposition respecting the formation of an Indian colony, contained in the report of the secretary of war, should be adopted by the government, we will have, according to the secretary's calculation, 75,000 at one litter, in addition to those already in the country. Will he tell us where he will put them? and how he will support them under existing circumstances? I believe this plan rational and practicable, if the Texas country belonged to the government; but, otherwise, the restricted limits in which he would have to plant his colony, would render it a perfect Indian slaughter-house."

There is only one way in which we can prevent this mutual havoc, and that is by the constant presence of a powerful armed force; and on that I shall presently say a word.

But the difficulty does not stop here. Where they now are, the Indians are surrounded by the population of the United States. When they are removed, their western boundary will be open to the desert. Is that desert empty? Is it occupied only by the buffalo? Sir, it is the hunting ground of the Pawnees and Camanches—the fiercest tribes of the continent. These are the masters in civilization, to whom we are going to send our hopeful pupils, to complete their education. Our Indians have made some progress in the arts of life; and now we are going to put them down by the side of these dreaded hordes, who are a terror even to our own armed traders, and still realize that frightful picture of Indian ferocity and power, which fills the early pages of the history of America. What must be the consequence? The answer is short: They will be destroyed. When these wild savages of the desert shall take our civilized red brethren in hand, they will most probably crush them.

This event can only be averted by another. If the Indians, whom you congregate in these prairies can (which I do not believe) ward off starvation; if they take root and flourish; and if they withstand the power of the untamed tribes in their neighborhood, it must be by resuming themselves the savage character. If they fight the Pawnees and Camanches, it must be by again becoming themselves a warlike race. I have no faith whatever in their being able to sustain themselves; but if they do, what have you effected? You have built up a community of near one hundred thousand Indians, obliged, in self-defence, to assume a warlike character, and provided, by your annuities, with the means of military annoyance. And what sort of neighbors will *they* be to your own white settlements? What sort of a barrier will you have raised to protect Arkansas from the Camanches? for this is one of the prospective benefits, which have been set forth as likely to result from this measure. The impolitic character of the measure, in this view of it, did not escape the observation of the most judicious person who has

visited this country, and who, on this ground also, strongly condemns the policy of concentrating the Indians upon it.

Sir, these alarms of war are not imaginary. A hostile incursion was made, as late as last January, into the south-western corner of the territory of Arkansas. One citizen was killed while at work, and the neighboring settlements thrown into confusion, and threatened with being broken up. Affidavits proving the fact are on your table. A letter is before me, from a highly respectable source in the territory of Arkansas, stating it to be now "ascertained that the Indians are preparing to make a general attack on our frontiers in the month of May or June next." While I speak it, Sir, the savage is, perhaps, on your frontier settlements. Will he spare your own Indians, whom you propose to throw as a barrier between him and these settlements? No, Sir; he will consider these new comers as intruders on his own domain. The vast region to which we have extinguished the title of the Osages and Kanzas, and over which we propose to scatter our tribes, is claimed as their own hunting ground, by the Pawnees and Camanches; and you are not to suppose, that, while their war-parties are insulting the regular troops of your own army, they will respect your enfeebled Indians. Let gentlemen read the account of the expedition sent out to overawe these war-parties during the last summer, and they will see this is to be no trifling business.

Do gentlemen forget that we have already been called on for strong measures of defence? There is now a bill on our tables, from the Senate, to mount ten companies for the protection of the frontier; and it is not alone against the unreclaimed savages of the desert, that we are called upon for protection. I find, Sir, among the papers accompanying that bill, a memorial from the Legislature of Missouri, setting forth the danger to be feared from the Indians collected by ourselves, in the region beyond the Mississippi.

In consideration of facts and representations like these, you have now before you a bill for mounting ten companies, a force equal to one tenth part of the army of the United States. You are actually obliged to turn one tenth of your army into rangers, to protect that frontier, beyond which you are going to congregate your Indian neighbors. If one tenth are now required, can any one doubt that our whole army would be little enough to repress the incursions of the wild tribes, and keep the peace among seventy-five thousand of our own Indians, pent up in their new districts, and protect the frontier from both? There is little doubt, in my mind, that it would require the standing army to be doubled, in order to effect these objects.

And now, Sir, let us count the cost. *Let us count the cost!* I do not say this is to be the governing consideration. I do not say, that, if the object could be fairly, and rightfully, and with good faith, attained, I would not go with gentlemen, who have expressed their readiness, on the like supposition, to take a hundred millions of dollars from the Treasury, and pledge the public credit for a century in advance. I will decide that, when the case comes up But I will know, first, what this movement is really to cost.

I will not vote in the dark. I will not be amused with a vote of five hundred thousand dollars, to execute a project, of which the expense will fall little, if any, short of five times five millions.

There are several items in the expenditure requisite to effect such a movement, which, though heavy in amount, are contingent in their nature, and difficult to calculate. I shall take only such as admit of being brought to a standard of calculation: 1st. The first item is the *original purchase money;* the price we are to give for the title which the Indians have, (whatever we call that title,) to the lands they occupy. This has ever been a heavy charge in our Indian treaties. What will it cost to extinguish the Indian title to more than fifty millions of acres of land, the quantity occupied by the Indians to be removed? Here we can have no safer estimate than *experience.* I shall take, as the basis of the calculation, the last considerable treaty with the Creek Indians, that of Washington, in 1826. By that treaty, we acquired four millions seven hundred thousand acres of land. The amount paid for this cession, including a principal sum, whose interest would equal the perpetual annuity of $20,000, was $650,933. This sum does not include the expenses of negotiation, the value of improvements relinquished, nor the purchase of the territory west of the Mississippi. The amount of land to be acquired exceeds fifty millions of acres; say eleven times the cession made by the treaty of Washington, or 51,700,000 acres. Eleven times the price paid for the Creek cession amounts to $7,160,133. I deem it fair, on every ground, to suppose that we shall have to pay, at least, as much for the other cessions as we did for that of the Creeks. The Creeks are the least civilized of the southern tribes, and consequently place the least value on their lands. The Cherokees and Choctaws could not, in reason or fairness, be expected to sell a cultivated country, for any thing like what is paid for the hunting grounds of uncivilized tribes. If the bill is passed, the Indians, in general, will feel and know that their lands will be purchased at whatever price. On all these grounds, I am warranted in taking the treaty of Washington as a safe standard for the calculation. I might with great propriety go above it; for it is now ascertained that a considerable region of these Cherokee lands is rich in gold. We are informed that four or five thousand persons are engaged in washing gold within the Indian country, and that they get two dollars each *per diem.* It may not be half that; but if it is only a quarter, or fifty cents a day, (which is likely to be nearer the truth,) it makes the country an exceedingly rich gold region. Hosts of intruders are already pouring into the country, to rob the Indians of their gold. We surely shall not imitate their example; we surely shall not take from them gold mines, yielding thousands of dollars a day, without an equivalent.* If the whole movement is not to be high-handed force in its most offensive form, we shall

* Since this speech was delivered, the governor of Georgia has issued his proclamation declaring that the State of Georgia has "the entire and exclusive property in the gold and silver in the lands" occupied by the Cherokee Indians, and forbidding the said Indians to dig for these metals in their own soil! And the President of the United States has co-operated with Georgia in this step!

pay them something like the value of the treasure, from the possession of which we expel them. If we do this, as we are bound, in equity and in common justice, to do, we shall have to pay, for the gold region alone, a sum equal to the whole of what I have estimated for the entire extinguishment of the Indian title. I am, therefore, amply warranted in taking the price of the Creek cession as the standard of the estimate, and putting down the first item at more than seven millions of dollars.

The next item is *improvements*. The bill provides, that we are to pay for such as add real value to the land. This term *improvements* is an expression somewhat vague in its import. But the promises which we have made to these Indians, as well as the dictates of the barest justice, will require us to make the Indians in the new country good. If we force them from their houses, we must build them other houses as good. We have solemnly promised we will. We shall be barbarous ourselves if we do not. We must rebuild for them, in the far distant wilderness, where wood is scarce, even for fuel, houses, mills, and workshops, such as they have left. They have expended no small sums, out of their annuities, in roads. Shall we set them down in the pathless desert, and do nothing to open avenues of communication to it, and between its different parts? They have here extensive enclosures to their fields; we must replace these in the prairie. They have wagons, ploughs, looms, and boats. These cannot be transported but at an expense beyond their value. They must be paid for, or replaced to them. They have a large amount of live stock, most of which will be an entire loss to them unless we purchase it, or put it in their power to replace it in the desert.

All this furnishes a vast amount. I will not undertake to make an estimate of my own; but I will take one furnished from the war department, by colonel McKenney, in reference to the Chickasaws. After a detailed enumeration of the items of the estimate, he gives the aggregate sum at $484,750, for the Chickasaws alone, a tribe amounting to four thousand souls. Now, it is perfectly well known, that this is not the most advanced tribe in civilization. They do not exceed the Choctaws, and they fall behind the Cherokees. I consider it, then, safe to take this estimate of the department, for the Chickasaws, as the standard of the estimate for the Indians to be removed. This will give us, as the value of the property of seventy-five thousand Indians, to be paid for, reimbursed, and replaced, $9,075,000.

The next item is the cost of *collection and transportation*. Here we have not merely official estimates, but experience to guide us. Two parties of Creeks have been sent over. That headed by Mr. Brearley, the agent of the emigrating Creeks, cost $52,297, for 1,200 individuals. The other party, headed by colonel Crowell, cost $27,585, for 1,300 individuals. The expense of the first party is $43 58 per head; that of the second $21 22 per head; an average of $33 40. Now, we are told from the department, that the price may be still farther reduced. Why? If we form an estimate on two fair experiments, the only reasonable mode of procedure is that of average; otherwise, we may make fancied esti-

mates that it will cost nothing, supposing it may be done for less and less each time. But we are to move them by contract, says the second auditor. Not, Sir, with my consent. Though I deprecate beyond measure the passage of this bill, I will, if the Indians must go, vote the appropriations to carry it humanely and equitably into execution. But I will not vote a dollar for this dreadful contract. Sir, send these Indians off by contract, and their removal will present a scene of suffering unequalled by that of a flying army before a triumphant foe. It will be the direct interest of the contractors to stint them in every supply and accommodation, and to hurry them to the utmost limits of human strength. I cast no imputations on the contractors; I know not who they are to be. But they are men, engaging in this business as a money-making speculation; and the most ordinary principles of human nature show, that, if transported in this way, many of these Indians will be destroyed on the march. Let us have no contracts; but send them under the guidance of men of high responsibility, and let us cheerfully pay the necessary expense. The average expense of the two parties of Creeks, which have already emigrated, is $32 48, taking the statement of the department, in which many things are omitted, fairly chargeable to the account. I will, then, take the cost of collection and transportation at $30 per head—an expense less than the actual average. The result is $2,250,000 for the whole number to be removed.

The next item is *subsistence for one year*. I have made some efforts to estimate this correctly. I am convinced that in the statements made in debate, on this floor, it has been very much underrated; from not adverting to the circumstance which most directly affects the cost of the ration, which, we are told, is not to exceed eight cents. On application at the proper department, I learn that the cost of the ration at our several military posts, west of the Mississippi, is as follows:—

At Cantonment Jesup, 25 miles from Natchitoches, . .	13½ cts.
Cantonment Gibson, 669 miles up the Arkansas, ...	10¼ "
Jefferson Barracks, near St. Louis, ...	6¾ "

And that "the great facility of transportation is the cause of the difference in price of the ration, in favor of the last named place." This is obvious; and, in calculating the value of the ration, at any given spot, we must take into consideration, not merely the price of beef, and pork, and corn meal, but that of transportation, which makes a difference of two hundred per cent. between St. Louis and Natchitoches. Now, it is to be remembered, that this subsistence is to be furnished in the interior of a very remote inland country. At Cantonment Gibson, which is, perhaps, the farthest point on the route, to which there is navigation, the ration is 10½ cents. The country where the rations are to be distributed, is, as Mr. McCoy says, one in which "the privileges of navigation will be very moderate. Should the territory prosper, the time will come when this circumstance will be felt as a serious inconvenience." We see how greatly the cost of the ration is enhanced at Cantonment Jesup, which is but twenty-five miles from Red River.

These provisions are to be carried by land where there are no roads. The chairman of the Indian committee tells us that there are fine droves of cattle on the head waters of the Washita. But the Washita does not penetrate this region, and there is a range of hills between. The ration will, unquestionably, cost more in the recesses of this country, than it does at Fort Jesup, within twenty-five miles of Natchitoches. It is there 13½ cents. I believe it will be twenty cents, on an average, throughout this pathless wilderness—without rivers—without roads—without population; but I will take it at only fifteen, being but one cent and a half beyond the military ration, within twenty-five miles of steamboat navigation. Taking the ration at 15 cents, one year's subsistence, without any extras or any contingencies, would be $4,106,250. Does this seem a vast amount? The operation is vast. Here is an army of 75,000 souls. Look into the accounts of war operations, and see if such an army can be subsisted in an untravelled wilderness, for a year, at less expense. I say nothing of the support which the government, unless it leaves them to starve, will indubitably be compelled to furnish them, at the end of the year, and for years to come.

Then, Sir, we have *titles to extinguish.* The Chickasaws are to be put down on the Choctaw lands. Will this cost nothing? The basis of all our operations has hitherto been to give acre for acre. The Cherokees are to be established on lands already granted either to the Creeks or to the Arkansas Cherokees. Something must be done to quiet the claims of the Osages and Kanzas, on whose reservations we are already encroaching; and very extensive extinguishments must be made for the north-western tribes. I say nothing of the claim of the Pawnees and Camanches, whose right to hunt in the whole region we must either buy out or fight out. For this purpose, numerous treaties are to be held; and the whole aggregate expense, estimating the present value of the annuities, which will probably be the form of the payment, cannot be less than one million and a half. We have, then, the following items of the expenditure, incident to removing the several nations of Indians from their native homes to the western wilderness:—

First purchase of their title,	$7,160,133
Expense of improvements to be paid for or replaced,	9,075,000
Collection and transportation,	2,250,000
Subsistence for one year,	4,106,250
Cost of new lands in the West,	1,500,000
	$24,091,383

But, Sir, we have not done, even at this rate. We have promised these Indians, that, if they remove, we will keep up their schools, now existing in considerable numbers. We have a territorial government to support among them, which, we are told by the department, will cost as much as that of Florida, which is about $25,000 per annum. It must be much more expensive, considering the materials to be governed, and that the govern-

ment is to descend to such details as counting off the trees, which each Indian family is to have in its wood lot. But I take it at $25,000. Then there is the expense of the military establishment to be kept up. I will go into no considerations to show that a very large military force, beyond any thing proposed or contemplated hitherto, will be required to keep these Indians at peace with each other; to defend them against the unreclaimed tribes; and to protect the frontier. I will confine myself to the expense of the ten companies of rangers already asked for. I have examined the report of the quartermaster general, of the 8th of last March, containing an estimate of the first cost of mounting ten companies and their annual support. Taking the cost of the horses at $100 each, which we are told by general Jesup, "it will be safer to assume," the first year's expense will be $83,750, and the annual charge, $39,875. So that the civil government of the new territory, and the military defence of the frontier, will amount to $64,875 *per annum*, according to these estimates. But no man can believe it will rest within any such limits.

I return to the cost of the operation, which I have calculated on official estimates. It is twenty-four millions—almost two dollars per head for the estimated population, at the census of this year. This enormous sum is to be raised by a tax on the people. Let us see what proportion of it is to be paid by the several States. I take the estimated numbers from a document submitted to the House, in reference to the apportionment of representatives, under the new census. On that basis, there will be paid for removing the Indians, by

Maine,	$748,000
New Hampshire,	564,000
Massachusetts,	1,152,000
Rhode Island,	184,000
Connecticut,	380,000
Vermont,	548,000
New York,	4,080,000
New Jersey,	650,000
Pennsylvania,	2,800,000
Delaware,	156,000
Maryland,	652,000
Virginia,	1,400,000
North Carolina,	920,000
South Carolina,	570,000
Georgia,	476,000
Kentucky,	1,120,000
Tennessee,	926,000
Ohio,	2,000,000
Louisiana,	200,000
Mississippi,	120,000
Indiana,	664,000
Illinois,	390,000
Alabama,	396,000
Missouri,	290,000

I ask gentlemen from every State in this Union, if they feel justified in laying such a tax on their constituents for such an object? I will not admit, that my constituents are less liberal than those of any other member. They are a frugal people, Sir, and their frugality enables them to provide honorably for all just and equitable demands of the government. But if we should go home, and tell the people of Massachusetts, that we have voted away eleven hundred thousand dollars of their money to remove these Indian nations, I believe they would call us to a very strict account,—an account, which I, for one, should not know how to meet. Sir, I solemnly believe, that I have not estimated the expense for removing this host one dollar too high;—but take it at a half; take it at a quarter, (and the chairman of the committee tells us, it may amount to $5,000,000,) is there a gentleman here who thinks that his State, if the question were fairly put, would agree to be taxed to such an extent for such an object? The State of New York will have to pay one million of dollars as her share of the expense, on its *admitted* cost. Let a resolution be introduced at Albany, approving such a tax, for such a purpose, and what would be its fate?

But the amount of this expenditure is not my greatest objection to it. The mode of its disbursement is still more exceptionable. The bill provides no check upon it. It is placed within the uncontrolled discretion of the department. Whatever confidence any gentleman may place in that department, such a discretion is at war with the character of our institutions, and is peculiarly so with the principle of specific appropriations, which has been so strongly urged upon us as the rule of our conduct. Of all the various objects connected with this bill, and comprehended under it, no one is specified. We cannot pass our appropriation bill for the support of government, without specifying the lowest officer who is to receive a salary, and the amount of that salary; and this, too, notwithstanding the existence of previous laws creating the office. Here we have a vast operation, extending to tribes and nations, to tens of thousands of souls, purchasing and exchanging whole regions, building fifteen thousand habitations in a distant wilderness, and putting 75,000 individuals in motion across the country, and not an officer or agent specified; not a salary named; not one item or expenditure limited; the whole put into the pocket of one head of department, to be scattered at his will!

Sir, I impute no corruption, nor purpose of corruption, to any officer, high or low. But I say a bill like this, which is to send a government agent to every Indian in the country, in order to tempt him off; which is to appraise the value of every Indian habitation, from the comfortable dwelling of the Cherokee, to the wretched cabin of the fugitive Seminole; which is to establish a home in the western prairie for every Indian who has left one east of the Mississippi; and to do all this, merely under the discretion of a department, is a thing unheard of in legislation. Sir, it must of necessity be a scene of corruption without example. Your commissioners may be men of honor and probity; but the nature of the operation will require an army of agents and sub-

agents, contractors and sub-contractors, appraisers and sub-appraisers. Were it but for its effect on the morals of the country in this respect, the passage of the bill ought to be earnestly deprecated.

And now, Sir, what is the *necessity* of this measure? What is the necessity of removing the Indians? Shall I confess my weakness, Sir? I have really tried to find a necessity for passing this bill. So great has been the sensibility manifested in the States most particularly interested; so strong their urgency; so alarming the consequences denounced upon us, if we do not pass it, that I have tried to feel myself under a moral necessity to pass it. I would gladly have gone for it, as the least of evils. But I cannot catch a glimpse of any such necessity. I look in vain, in all the documents from Georgia and elsewhere, to find a positive strong reason why the Indians should be removed. I find nothing but vague propositions, to which (with the utmost willingness to feel their force) I can attach no clear, cogent meaning. They tell us, that, till the Indians are gone, they cannot consolidate their society, nor complete their improvements. These generalities carry no meaning to my mind; at least, none to warrant such stern legislation. "Consolidate their society!" Is not the social system as solid in Georgia as any where else? "I would not hear her enemy say so." And what obstructs her improvement? Not, surely, the presence of a handful of Indians in a corner of the State. What is the population of Georgia, where there is no room for these few Indians? It is less than seven to the square mile. We, Sir, in Massachusetts, have seventy-four to the square mile, and space for a great many more. And yet Georgia is so crowded that she must get rid of these Indians in her north-western corner!

Sir, my eye was arrested this morning by a paragraph in the paper, said to be an extract from a letter of a most worthy and estimable gentleman, remembered with regard by many who hear me, as by myself—the governor of Georgia. As it contains nothing but what I sincerely hope and believe is true, I will quote it:—

"The governor of Georgia, in a letter to a gentleman of Philadelphia, says:—"We have no such class as the poor. Our lands are so cheap, and the absolute necessaries of life so easily obtained, that the number of dependent poor are scarcely sufficient to give exercise to the virtues of charity in individuals. A beggar is almost as rare with us as a prince. Children, instead of being an incumbrance to the poor of our country, are their riches."

[Mr. Wayne of Georgia here said—"It is true."]

My friend from Georgia tells me it is true. I am heartily glad of it; I hope it will always be true; and I wish I had known it a week or two ago, when I was trying to prove that the tariff had not ruined the Southern States.

Being true, Sir, I appeal to that high-minded people to be as liberal as they are prosperous, and leave these poor Cherokees in the possession of their native lands.

I have been struck, Sir, with the prophetic import of a speech that was uttered by a celebrated Cherokee chief, on occasion of the first cession that was made by treaty of the lands of that tribe,

in the now powerful and flourishing State of Tennessee. I wish the historian* had given it in the very words of the chief; for every man of taste will agree with me, that, among these morsels of native eloquence, there are some which would do honor to the best days and most gifted minds of Greece or Rome. That treaty was negotiated in the memorable month of April, 1775. On that occasion, Oconnostata is said to have delivered "a very animated and pathetic speech. He began with the flourishing state in which the nation once was, and stated the encroachments of the white people from time to time, upon the retreating and expiring nations of Indians, who left their homes and the seats of their ancestors, to gratify the insatiable desire of the white people for more land. Whole nations had melted away in their presence, like balls of snow before the sun, and had scarcely left their names behind, except as imperfectly recorded by their enemies and destroyers. It was once hoped that they would not be willing to travel beyond the mountains, so far from the ocean, on which their commerce was carried on. But now that hope had vanished; they had passed the mountains, and settled upon the Cherokee lands, and wished to have usurpations sanctioned by a treaty. When that shall be obtained, the same encroaching spirit will lead them upon other lands of the Cherokees; new cessions will be applied for, and, finally, the country which the Cherokees and their forefathers had so long occupied would be called for, and the small remnant which may then exist of this nation, once so great and formidable, will be compelled to seek a retreat in some far distant wilderness; there to dwell but a short space of time, before they would again behold the advancing banners of the same greedy host, who, not being able to point out any further retreat for the miserable Cherokees, would then proclaim the extinction of the whole race. He ended with a strong exhortation to run all risks, rather than submit to any further encroachment on their territory; but he did not prevail!"

This was in 1775. Since then, Sir, there has been more than one period, when, though *we* talk of "*giving* peace" to these Indians, we have been glad to take it; when they hung fearfully upon the flanks of your settlements; when Spain used them as her allies, and held you in check through them. There have been times, Sir, when, had these Indians been inspired to foresee the future, it would never have been a subject of dispute, for whose benefit the treaties of Hopewell and Holston were made. I assert, fearlessly, that there have been periods when the preservation by them of the faith, plighted between them and us, was an object as important to us, as it is now to them.

But times are changed. Sir, in a late visit to the public grave yard, my attention was arrested by the simple monument of the Choctaw chief, Push-ma-ta-ha. He was, I have been told by those who knew him, one of nature's nobility, a man who would have adorned any society. He lies quietly by the side of our

* Judge Haywood's Civil and Political History of Tennessee, p. 45.

statesmen and high magistrates, in the region—for there is one such—where the red man and the white man are on a level. On the sides of the plain shaft that marks the place of his burial, I read these words:—

"Push-ma-ta-ha, a Choctaw Chief, lies here. This Monument to his Memory is erected by his brother Chiefs, who were associated with him in a Delegation from their Nation, in 1824, to the General Government of the United States. He was a Warrior of great distinction: he was wise in Council; Eloquent in an extraordinary degree: and, on all occasions, under all circumstances, the White Man's Friend."*

The chief, whose grave-stone is so touchingly eloquent, was among the head-men of the Choctaw people, who negotiated, with the present Chief Magistrate, the treaty of Doak's Stand. His name and that of the President are side by side on the parchment. It is well that he is gone; for, were he alive, and did he presume to exercise the office of chief, in which you recognised him, and do the acts which it is stipulated by the treaty he should do, he would subject himself to the penalties of the law of Mississippi, to be fined a thousand dollars, and imprisoned for a year.

Sir, this policy cannot come to good. It cannot, as it professes, elevate the Indian. It must and will dishearten, depress, and crush him. If he has within him a spark of that pride, without which there can be no rational improvement, this gloomy policy would subdue it. I have labored hard to take an opposite view of the subject; but there is no bright side to it. It is all unmingled, unmitigated evil. There is evil on the other side, but none commensurate with that of this *compulsory removal.*

There, Sir, I set my foot—*it is compulsory.* If you will treat the Indians as free agents; if you will withdraw your legal duress; if they are willing, after exploring the country, to go, I am willing they should, and will join in making the appropriation. But while the laws exist, beneath which they cannot live, it is in vain to tell me they are willing to go. How do you know it? Do you tell me a man locked up in prison does not wish to come out? Unlock the prison doors, and then you can tell.

I have heard it said, these laws are passed *in terrorem;* that it is not intended to enforce them. *In terrorem*, Sir, and the removal still voluntary! Are gentlemen serious? Repeal the laws; put the Indians in a condition to act voluntarily, and then, if they choose to go, I will not withhold my vote from any reasonable appropriation; scarcely from an unreasonable one, to pay the cost of the removal.

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* Push-ma-ta-ha is said to have addressed himself to his brethren in the following manner before his death:—

"I shall die, but you will return to our brethren. As you go along the paths, you will see the flowers, and hear the birds sing; but Push-ma-ta-ha will see them and hear them no more. When you are come to your home, they will ask you, Where is Push-ma-ta-ha?—and you will say to them, He is no more. They will hear the tidings like the sound of the fall of a mighty oak, in the stillness of the woods."

I adjure you, Sir, to recede: there is no disgrace in it. Other States, more powerful than Georgia, have receded, on points where their honor and interest were equally involved. Sir, if Georgia will recede, she will do more for the Union, and more for herself, than if she could add to her domain the lands of all the Indians, though they were all paved with gold.

The evil, Sir, is enormous; the violence is extreme; the breach of public faith deplorable; the inevitable suffering incalculable. Do not stain the fair fame of the country: it has been justly said, it is in the keeping of Congress, on this subject. It is more wrapped up in this policy, in the estimation of the civilized world, than in all your other doings. Its elements are plain, and tangible, and few. Nations of dependent Indians, against their will, under color of law, are driven from their homes into the wilderness. You cannot explain it; you cannot reason it away. The subtleties which satisfy you will not satisfy the severe judgment of enlightened Europe. Our friends there will view this measure with sorrow, and our enemies alone with joy. And we ourselves, Sir, when the interests and passions of the day are past, shall look back upon it, I fear, with self-reproach, and a regret as bitter as unavailing.

EXTRACT FROM AN OPINION OF CHANCELLOR KENT, ON THE SOVEREIGNTY OF THE INDIAN TRIBES. *Johnson's Reports.*

"In the treaty between the United States and the Wyandots, Ottawas, Chippewas, and others, in 1785, it was provided that if any Indian commit murder, or robbery, upon a citizen of the United States, they shall deliver him up to be punished according to our law. This surrender of criminals is here made part of a national compact, and the distinction is preserved between Indians and citizens; and, while we assume the right to redress the injuries of the one, we abandon the other to the protection of their own people. The treaties with the Cherokees, in 1785 and 1791, go further, and provide, that citizens of the United States, committing robbery, or murder, on the Cherokees, shall be punished by us in like manner as if the same were committed upon one of our own citizens. They also contain a new and striking provision, and that is, that citizens settling upon their lands, thereby forfeit the protection of the United States, and the Cherokees may punish them as they please. The same provision, relative to the surrender and punishment of persons guilty of murder, or robbery, is inserted in the treaties with the Choctaws, Chickasaws, Shawanese, Creeks, Ottawas. Chippewas, &c. And, in the treaties with the latter tribes, in 1789 and 1795, citizens settling on their lands are declared to be out of the protection of the United States, and liable to punishment at the discretion of the Indians.

"It would seem to me to be almost idle to contend, in the face of such provisions, that these Indians were citizens or subjects of the United States, and not alien and sovereign tribes."

Extract from an Opinion of the Supreme Court of the United States.

The Court say, "The original inhabitants of this continent were admitted to be the rightful occupants of the soil, *with a legal as well as just claim to retain possession of it, and to use it according to their own discretion.*" Again:—

"If an individual might extinguish the Indian title for his own benefit, or, in other words, might purchase it, still he could acquire only that title. Admitting their power to change their laws or usages, so far as to allow an individual to separate a portion of their lands from the common stock, and hold it in severalty, still it is a part of *their territory*, and is held *under them*, by a title dependent *on their own laws*. The grant derives its efficacy from their will; and if they chose to resume it, and make a different disposition of the land, *the courts of the United States cannot interfere for the protection of the title.*

"The person who purchases land from the Indians, *within their territory*, incorporates himself with them, so far as respects the property purchased; holds *their title* under *their protection*, subject to *their laws*. If *they* annul the grant, *we know of no tribunal* which can revise and set aside the proceeding."

Close of the professional Opinion of the Hon. William Wirt, late Attorney-General of the United States.

On every ground of argument, on which I have been enabled, by my own reflections or the suggestions of others, to consider this question, I am of the opinion,

1. That the Cherokees are a sovereign nation; and that their having placed themselves under the protection of the United States does not at all impair their sovereignty and independence as a nation. "One community may be bound to another by a very unequal alliance, and still be a sovereign State. Though a weak State, in order to provide for its safety, should place itself under the protection of a more powerful one, yet, according to Vattell (B. 1. Ch. 1, § 5 and 6,) if it reserves to itself the right of governing its own body, it ought to be considered as an independent State." 20 *Johnson's Report*, 711, 712, *Goodwell vs. Jackson.*

2. That the territory of the Cherokees is not within the jurisdiction of the State of Georgia, but within the sole and exclusive jurisdiction of the Cherokee nation.

3. That, consequently, the State of Georgia has no right to extend her laws over that territory.

4. That the law of Georgia, which has been placed before me, is unconstitutional and void—1. because it is repugnant to the treaties between the United States and the Cherokee nation; 2. because it is repugnant to a law of the United States passed in 1802, entitled "an act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers;" 3. because it is repugnant to the Constitution, inasmuch as it impairs the obligation of all the contracts arising under the treaties with the Cherokees; and affects, moreover, to regulate intercourse with an Indian tribe—a power which belongs exclusively to Congress.

WM. WIRT.

Baltimore, June 20th, 1830.

EXTRACTS

FROM A SPEECH OF THE

HON. JOHN TEST,

REPRESENTATIVE FROM INDIANA,

DELIVERED IN THE HOUSE OF REPRESENTATIVES, WEDNESDAY EVENING, MAY 19, 1830.

The first thing that strikes the mind in the case is its novelty. The government, ever since its establishment, has viewed those Indians in the light of sovereign communities, and treated with them as such. In all our intercourse with them for fifty or sixty years, we have negotiated and dealt with them as independent sovereignties, without a single exception; but this bill now proposes to change our policy, and throw all these tribes of Indians into the hands of the President of the United States, to be bargained with like individuals or petty corporations. No treaty is contemplated by the bill; no convention with them as a nation; but a door is to be thrown open, by which you can approach every individual of the tribe, and make a separate bargain with him for his little improvement. More of this, however, when I come to examine particularly the principles of the bill. But I would ask, Sir, Why is it now necessary to change our policy towards these sons of the forest? What has produced this necessity? Will not the Indians agree to sell their lands, and must they be made willing at any rate, and by any means? Is it necessary to descend to making individual contracts instead of national ones? If you cannot obtain the consent of the nation to dispose of its domain, is it right and just to tamper with individuals, and thereby weaken its power, by distracting its councils, setting its members at war among themselves, creating strife, feuds and separate interests, in order to accomplish, in this manner, what you could not by fair and honorable treaties? Sir, I have said that our policy of treating with the Indians as sovereign communities has been settled ever since the establishment of our independence; and, I will say further, it has had the sanction of all the distinguished statesmen and patriots from the revolution down to the present day. General Washington and his cabinet solemnly recognised the principle, as appears by the document read to the committee of the whole, by the honorable gentleman from New York, (Mr. Storrs.) Alexander Hamilton, the elder John Adams, Mr. Jefferson, Mr. Madison, Mr. Monroe, and John Q. Adams, have all maintained the same opinion; and the American people recognise the same principle at this moment;

nor will they ever sanction any other, so long as the Indians remain a distinct and separate race of men.

Now, Sir, what have we done, and how stands the case? In 1785, 91, 95, and every year since, we have told these Indians, We will protect you—you shall live under your own laws—no white man shall step his foot upon your soil—your lines shall be marked—and if a white man intrudes upon you, you may punish him as you please, and we will hold him as being without our protection. Those treaties have been renewed—they now subsist, and are in full force. The national faith, and the national honor, are all pledged for their support and maintenance. Nay, the very same person, who now holds in his hands the national prerogative, has himself sanctioned the doctrine, and renewed all the pledges, while acting under other functionaries of the government. And now, since he has been elevated to the lofty station which he holds, he has reversed all these solemn decrees. He now holds a very different language. He tells the poor savage, I cannot protect you—you must submit to the laws of the States, or you must march to the wilderness; you must seek in the desert that repose which is denied you here. Georgia is a sovereign State—I cannot undertake to control her: she must do as she pleases with you. If I were to attempt to control her, she might do something injurious to us, and ruinous to you. Sir, this is a language the poor Indian never heard before from this government, and never had a right to expect to hear. Nor is this an overdrawn picture: it is short of the truth. I need not refer to the book containing the language: I hold it in my hand; it is on every gentleman's table in this house.

The first prominent feature in this bill, and which must strike every man the moment he casts his eye upon it, is this, that it proposes to withdraw from the Senate their revisory power over the treaties and compacts entered into by the President of the United States. The whole burthen of this business is to be thrown into his hands, to be disposed of according to his discretion. No treaty is to be made in form. The bill declares "the *President* may lay off the districts of land," "the *President* may exchange lands," "the President shall do, and shall cause to be done," every thing proposed by the bill. The Senate have yielded themselves into the hands of the Executive, to dispose of, no one knows how much of the public lands, but surely not less than one hundred millions of acres; and besides that, not less than twenty millions of public moneys; and all this without any check or control from any quarter whatever. This enormous sum of money is to be disbursed under his discretion, by such persons as he may think proper to appoint, and who are answerable to him alone. All those vast contracts are to be carried into execution by men appointed solely by the President, without consulting any power, save his own. If a petty officer of the government, without pay or responsibility, is to be permanently appointed, the President has to ask the advice and consent of the Senate: but here, Sir, one hun-

dred, and for what I know, or any one else, one thousand will be appointed, for the disbursement of some twenty millions of dollars of public money, subject only to the will and control of the Executive. If, Sir, I had the most implicit confidence in the discretion, the energy and firmness of the President, I would withhold from him this vast power and patronage. It is possible he may make some improvident appointments, as we have undeniable evidence that he has done in some instances; and the individuals appointed may make some very onerous contracts: but the moment they are made, they are binding upon the government, and you will have to appropriate money for their payment, because the nation is pledged to do so. Where is this vast scheme to end? Seventy or eighty thousand Indians are to be removed across the Mississippi, and no principle established upon which it is to be done, except what may be devised by the Executive, within the provisions of a loose and indefinite bill. I ask again, Sir, if it were intended to consult the feelings of the Indians upon the occasion, why was it necessary to withdraw the subject from the treaty-making power? Why was it necessary to throw the whole into the hands of the Executive, without, at least, consulting his constitutional advisers (the Senate)? He ought to have, in an affair of so much importance, the counsel of the whole nation.

Sir, I have another insuperable objection to this bill, and one that it is impossible for me to reconcile with the duty I owe to myself. I believe those Indians are sovereign communities, at least so far as to render it necessary to hold treaties with them, as with other powers, and not mere compacts, as with individuals. The language of the Constitution is express, "that Congress shall have power to regulate commerce with foreign nations, among the several States, *and with the Indian tribes.*" "And that the President shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur." Now, Sir, in relation to the regulation of commerce with foreign powers, and with the Indian tribes, there is no kind of distinction made in the Constitution between the modes to be pursued in relation to foreign powers and that of the Indian tribes: hence, I take it for granted, there is no difference allowed to be made in the mode of procedure between the two. It is to be done by treaties, and by laws in pursuance of treaties, and no other mode can be adopted by Congress without a violation of the Constitution. There is a treaty-making power created by the Constitution, and that is to be exercised in a particular way pointed out by the Constitution; that being the case, this house, or both houses, cannot nullify or change that mode, without an express violation of its principles. What was the treaty-making power created for, if Congress may adopt any other mode they please? I say it cannot be done by this house, or by both houses, or otherwise the Constitution is a dead letter. If the President, by and with the advice and consent of the Senate, is alone authorized to make treaties, how can Congress substitute any other

mode? No one, I believe, would be hardy enough to affirm that the President alone could make a treaty with a foreign power; and if he cannot do so with a foreign power, I ask how can he do it with an Indian tribe, when the power to do the one is granted in the Constitution, by the very same words as is that to do the other. What would the people of the Union say, if Congress were to pass an act authorizing the President to negotiate a treaty with England, or any other foreign power, to adjust and fix a tariff of duties to suit his own notions, without consulting the Senate or this house? Would they not say the act was unconstitutional, as well as an infringement of their rights? Would they not say, that was a power they never authorized us to confer, and pronounce us usurpers for doing so? They certainly would, and justly too. I say, Sir, would not such a proposition shock this nation? And yet this bill proposes to do what is in principle precisely the same thing, and, indeed, a scheme of equal magnitude, and of more alarming and dangerous consequences.

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Sir, I have but a few words more, and I have done. There is one feature in the law of Georgia which I have not mentioned, and which is perhaps more onerous and more calculated to secure impunity to the wicked and malevolent, in the violation of the rights of the Indians, than any other: it is this, that no Indian can be received as a witness against a white man. Now, Sir, I would not find fault with such a provision, if Georgia did not compel them to submit to her own laws: if she permitted them to be governed by the rules and regulations which they prescribe for themselves, they would have no right to complain, or, at least, not the same right; or if she limited the provision of the act to her own acknowledged dominion, and did not extend it to the lands and villages confessedly belonging to the Indians; but as it stands, how does it operate? Why, Sir, the whites may go into their towns, and murder men, women and children with perfect impunity, unless, indeed, there shall happen to be an honest white man present, which will hardly ever be the case. The whole of the intercourse laws of the United States are let loose, and rendered null and void by the construction given them by the President of the United States. And white men are permitted by the laws of Georgia to go among them whenever they please; and, indeed, the executive officers are paid mileage for going; and when there, they have a perfect immunity to commit every kind of outrage upon the Indians, because there can be no witnesses against them.